

LEGAL SERVICES CORPORATION ACT AMENDMENTS OF 1983

HEARING BEFORE THE COMMITTEE ON LABOR AND HUMAN RESOURCES UNITED STATES SENATE NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

CONSIDERATION OF EXTENDING THE AUTHORIZATION OF APPROPRIATIONS FOR THE LEGAL SERVICES CORPORATION AND WAYS TO IMPROVE PROVISIONS RELATING TO OPERATION OF THE CORPORATION AND LEGAL SERVICES PROGRAMS

MAY 4, 1983

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U.S. GOVERNMENT PRINTING OFFICE

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LEGAL SERVICES CORPORATION ACT AMENDMENTS OF 1983

WEDNESDAY, MAY 4, 1983

U.S. SENATE,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, D.C.

The committee met, pursuant to notice, at 2:20 p.m., in room SD-430, Dirksen Senate Office Building, Senator Orrin G. Hatch (chairman) presiding.

Present: Senators Hatch, Nickles, Humphrey, Denton, Kennedy, and Eagleton.

Senator DENTON. Good afternoon. This hearing will come to order.

The chairman, my distinguished colleague from Utah, will be here shortly, and he requested that I open the hearing and preside until his arrival. His opening statement is made a part of the record at this point.

[The opening statement of Senator Hatch follows:]

OPENING STATEMENT OF SENATOR HATCH

The CHAIRMAN. The subject of today's hearing is the Legal Services Corporation, a Federal program which has rarely been examined in a dispassionate manner. Yet such an examination is desperately needed, for a very real question exists as to whether the Corporation is accomplishing its mandate—to provide the poor with access to our judicial system in a manner that neither fosters nor is subjected to the designs of political opportunists.

To question the activities of the Corporation and its 326 grantees is, of course, politically disadvantageous. One is led to believe that the nobility of the Corporation's purpose makes any question as to the propriety of some of its activities nothing less than a vicious attack on the poor themselves. This misinformed, oversimplified presumption has scared away much needed review and has provided the Corporation with a congressional carte blanche to operate without oversight, without review, and without criticism. I have yet to find, in my years as a Senator, a Federal agency or federally funded corporation that would not benefit from occasional congressional oversight. The Legal Services Corporation is no exception.

I have not introduced a bill prior to this hearing concerning legal services because I am not confident that Congress has before it even the most rudimentary facts normally considered to be a prerequisite to any consideration of funding or refunding. To this end, I have sent Mr. Bogard, the President of the Legal Services Corpo-

ration, a five-page letter seeking what I believe to be basic information about the Corporation's activities. I hope, Mr. Bogard, that we will be receiving your answer in the immediate future.

Mr concerns with the Legal Services Corporation are really four-fold. First, is the Corporation, as it is currently structured, the most effective vehicle for providing legal services to the poor? For example, some believe that the existing staff attorney system is not only the best approach, but that these lawyers should focus more on social reform, even to the exclusion of individual cases. Howard Saks, a former board member, contended that, "The pursuit of impact, even though it may require turning away some individual cases, is a good strategy."

Others contend that the Corporation must be reformed. As Thomas J. Wynn, the former president of the Massachusetts Bar Association noted in 1982:

(The Corporation) was designed to be the primary vehicle for delivery of legal services to the nation's poor. It was not intended to act as a social reform movement . . . The solution to the dilemma seems straight forward. The LSC must refocus its priorities and represent the legitimate needs of the poor. They must refrain from unauthorized lobbying or social reform and from the excessive litigation on issues of questionable significance.

Still others contend that the misuse of corporate funds will always continue until legal services is provided in some other manner than a staff attorney approach.

My second concern is whether Congress should have any say in how the Corporation distributes its funds, or in the kinds of activities its grantees engage in. Much ado has been made over the congressional prohibition against lobbying by federally funded legal service attorneys, but the prohibition, from a practical standpoint is meaningless. Despite numerous congressional efforts, the Corporation and its grantees actively engage in lobbying; they instruct staff on lobbying; they publish books on lobbying.

Moreover, under existing law, the lobbying prohibition contains numerous exemptions. For example, the Corporation can lobby Congress concerning its own reauthorization. If anyone has any doubt about the sophistication and coordination of this activity, I suggest they read a Corporation memorandum dated December 29, 1980. Its author, Alan Houseman, lays out what he describes as an aggressive lobbying campaign to insure "The survival of committed, aggressive and political staff whether they are lawyers, paralegals, support staff or other advocates."

To be honest, there seems little indication to date that Congress can effectively and practically control the activities of the Corporation and its grantees.

My third concern is whether there is a real need for an increase in the Corporation's authorization. This year, the Corporation is funded at \$241 million and an effort is underway to raise this amount to \$296 million for fiscal year 1984.

Yet there seems to be much confusion over how much money is available for use by Federal grantees. It has been estimated that the Corporation's budget would be increased by \$41 million without any additional increase in Federal funding if grantees were not permitted to hoard funds already provided them. According to the Corporation, in 1982, 26 field programs had carryover funds in

excess of 50 percent of their annual grants. This is not a new problem. The General Accounting Office found, in 1980, that just 37 grantees accounted for more than \$8.7 million in carryover funds in 1979 alone.

This refusal to spend funds apparently stems from a concern that these grantees might not be given equivalent funds in the future. I can only wonder if the concern here is for the legal needs of the poor or whether it is a concern by these local organizations that they may not always be guaranteed permanent status as a Federal grantee. And apparently, such permanence is not only expected but achievable.

Why else would such large percentages of grants be spent on the purchase of real estate? For example, the Birmingham area Legal Services Corporation purchased a building for \$500,000, a figure that represents half of its annual grant.

Moreover, it has been interesting to note that none of the discussion over funding has acknowledged that the Corporation, according to its own account, receives an additional \$25 million each year from other Federal programs, and \$26.4 million in various State, local, and private contributions. In other words, in fiscal year 1983, the Corporation and its grantees actually really received not \$241 million but \$292.4 million.

My fourth and final concern is whether the Corporation, as it now exists, is dedicated to the legal needs of the poor or to the political philosophy of its staff. Were the poor people of Texas really interested in preventing the special election in the Sixth Congressional District or was the staff of Texas Rural Legal Aid interested in preventing Phil Gramm from being elected as a Republican to the House of Representatives?

Is one of the critical legal problems benefiting the poor today, whether State governments should be financing sex change operations? Suits pursuing this objective were brought by local legal service organizations in Montana in 1979, in Iowa in 1980, and in Connecticut in 1981.

Are the poor best served by a Legal Service Corporation that would settle a case if the employer stipulates that the Texas right-to-work law is unconstitutional? In a current case, the employer has warned that if it fails to agree to these conditions, legal service attorneys will seek an additional \$125,000 in damages from the employer.

Are the poor best served by a Legal Services Corporation that is attempting to block the State of Florida from requiring that students pass a functional-literacy test before they can graduate from high school? The Corporation's lawyers are concerned with the stigma that would attach to students who fail such a test. No one seems concerned with the more obvious need to make sure that all students who graduate from our school systems are functionally literate.

I hope that today we will receive answers to these and other questions about the Corporation so that we can consider Federal funding of legal services from an informed and objective standpoint.

OPENING STATEMENT OF SENATOR DENTON

Senator DENTON. I will take this opportunity to comment briefly as to my own position and attitude toward the Legal Services Corporation. Without equivocation, I am a supporter of legal services for the poor. I am not, however, disposed to be an ardent supporter of the Legal Services Corporation. I believe the Corporation has strayed widely from its mandate, which is to provide routine legal services to the poor. It has, instead, on too many occasions and in too many ways, become heavily involved in trying to formulate public policy and to lobby for social change. The former responsibility properly is left to elected officials accountable to the public and the latter one is scarcely fitting for the Legal Services Corporation, considering its mandate.

Despite the administration's request that no money be provided for the Corporation, Congress has continued to fund it. For fiscal year 1983, \$241 million is appropriated. Although Congress has, on a number of occasions, placed restrictions or tried to place restrictions on the activities of the Legal Services Corporation grantees, restrictions on lobbying, for example, these restrictions largely have been ignored or circumvented by the Corporation and its grantees. LSC grantees have absolutely no incentive to abide by the restrictions or to strive to provide good service because they are entitled to presumptive right to refunding, making it extremely difficult to defund grantees that are ineffective or who blatantly ignore the intent of Congress.

Thus, it has been more and more apparent that the Legal Services Corporation grantees are accountable to no one and have free rein to pursue whatever causes they want, often at the expense of serving individual clients with routine legal problems. Attempts to effect some substantive reforms are met by howls of protest from the legal services community and personal attacks against those recommending those changes in a number of cases.

The legal services community also claims that the reductions in appropriations have severely restricted the number of indigent persons who can be helped with their legal problems, yet it was revealed that at the end of calendar year 1981, Legal Services Corporation grantees had carryover balances totaling \$41 million that presumably could have been put to use helping poor people with their legal difficulties. The fact that this startling statistic was not widely reported exemplifies the manner in which the controversy surrounding the Legal Services Corporation has been presented.

While the goals of the Corporation are certainly laudable, no attempt is made to show how the goals and actual practices of the LSC have diverged in many cases. Instead, those who propose alternative means of providing legal services are savaged as trying to deny the poor access to our legal system.

Although I am pleased that under Mr. Bogard the Legal Services Corporation seems to be concentrating on efforts to redress past abuses and address themselves to the proper objectives, I believe that a great deal more needs to be done to insure that the Corporation provides the routine legal services envisioned under the original act.

I want to welcome my friend and colleague from Missouri and explain to him that the chairman is delayed by a press event and asked me to open this hearing, which I have done. I now turn it over to you, sir.

**STATEMENT OF HON. THOMAS F. EAGLETON, A U.S. SENATOR
FROM THE STATE OF MISSOURI**

Senator EAGLETON. Thank you, Mr. Chairman. I have a brief opening statement and then we will get to our witnesses. I appreciate the fact that Senator Hatch has called this hearing of the Labor and Human Resources Committee to consider reauthorization of the Legal Services Corporation Act.

As you know, I, along with nine of our colleagues on this committee, introduced S. 1133 to reauthorize the corporation for fiscal years 1984 and 1985. I believe that both members of the committee and the witnesses appearing before the committee today are familiar with the provisions of the bill, and in the interest of time, I will ask that the text of the bill and a summary of the bill's provisions be included in the hearing record.

Senator DENTON. Without objection, it will be included in the record.

[The text of S. 1133 follows:]

GOVERNING BODY

1
2 SEC. 2. (a) Section 1004(a) of the Legal Services Cor-
3 poration Act of 1974 (hereafter in this Act referred to as “the
4 Act”) is amended by adding at the end thereof the following:
5 “All individuals appointed to the Board shall be fully sup-
6 portive of the underlying principle of the Act that it is in the
7 national interest that low-income individuals have equal
8 access under the law to comprehensive and effective legal
9 services. Individuals appointed to the Board who are general-
10 ly representative of the organized bar shall be individuals
11 who—

12 (1) have participated on bar committees concerned
13 with the delivery of legal services to the poor;

14 (2) have served on the governing body of an orga-
15 nization or entity involved in such delivery; or

16 (3) have engaged in the direct provision of legal
17 services to eligible clients through a staff attorney, or a
18 pro bono or reduced fee program.

19 Each individual appointed to the Board as an eligible client
20 shall be an individual who, when nominated, was eligible to
21 receive legal assistance under this Act.

22 (b) Section 1004(h) of the Act is amended by adding at
23 the end thereof the following: “At each meeting of the
24 Board, the presence of six qualified members who meet the
25 requirements of section 1004(a), at least one of whom shall

1 be an individual who when appointed was one of the eligible
 2 clients, shall be necessary to constitute a quorum.”.

3 (c) Section 1002 of the Act is amended by redesignating
 4 clauses (6), (7), and (8) as clauses (7), (8), and (9), respective-
 5 ly, and inserting after clause (5) the following:

6 “(6) ‘qualified’ means, with respect to a member
 7 of the Board, an individual who has been appointed by
 8 the President, by and with the advice and consent of
 9 the Senate, and who has taken the oath of office;”.

10 POWERS, DUTIES, AND LIMITATIONS

11 SEC. 3. Section 1006(d)(5) of the Act is amended by
 12 adding at the end thereof the following: “With respect to a
 13 class action suit against the Federal Government or any
 14 State or local government, the project director shall, prior to
 15 filing such action, further determine—

16 “(A) that the class relief which is the subject of
 17 such an action is sought for the primary benefit of indi-
 18 viduals who are eligible for legal assistance;

19 “(B) that the government entity is not likely to
 20 change the policy or practice in question, and that the
 21 policy or practice will continue to adversely affect eli-
 22 gible clients; and

23 “(C) that the recipient has given notice of an in-
 24 tention to seek class relief and that reasonable efforts
 25 to resolve the adverse effects of the policy or practice

without litigation have not been successful or would be adverse to the interests of the client.”.

GRANTS AND CONTRACTS

SEC. 4. (a) Section 1007(a) of the Act is amended—

(1) by redesignating clauses (3) through (10) as clauses (4) through (11), respectively, and

(2) by inserting after clause (2) the following new clause:

“(3) make available, in each fiscal year to the extent feasible and consistent with clause (4), substantial funds to provide the opportunity for legal assistance to be furnished to eligible clients by private attorneys;”.

(b) Section 1006(b)(5) of the Act is amended—

(1) by striking out “section 1007(a)(6)” and by inserting in lieu thereof “section 1007(a)(7)”; and

(2) by striking out “section 1007(a)(5)” and inserting in lieu thereof “section 1007(a)(6)”.

(c) Section 1007(a)(4) of the Act, as redesignated by this section, is amended by inserting before the semicolon a comma and “consistent with the findings of the study conducted under section 1007(g) of this Act, in effect prior to the date of enactment of the Legal Services Corporation Act Amendments of 1983.”.

1 (d) Section 1007(a)(6) of the Act, as redesignated by this
2 section, is amended to read as follows:

3 “(6) insure that no funds made available by the
4 Corporation shall be used at any time, directly or indi-
5 rectly, to pay for any personal services, advertisement,
6 telegram, telephone communication, letter, printed or
7 written matter, or any other device intended or de-
8 signed to influence any Member of Congress or any
9 other Federal, State, or local elected official to favor or
10 oppose any Acts, bills, resolutions, or similar legisla-
11 tion, or any referendum, initiative, constitutional
12 amendment, or any similar procedure of the Congress,
13 any State legislature, any local council or any similar
14 governing body acting in a legislative capacity, except
15 when—

16 “(A) communications are made in response
17 to any Federal, State, or local official upon the
18 formal request of such official; or

19 “(B) the project director of a recipient has
20 expressly approved the undertaking of legislative
21 representation of an eligible client in accordance
22 with policy established by the governing body of
23 such recipient and has determined prior to ap-
24 proving the undertaking of such representation
25 that (i) the client is directly affected by provisions

1 of particular legislation or is in need of relief
 2 which can best be provided by the legislature, and
 3 (ii) that documentation specifically authorizing
 4 such representation has been secured from the eli-
 5 gible client, which documentation includes a state-
 6 ment of the specific interest of the client; or

7 “(C) the project director of a recipient has
 8 expressly determined that the legislative body is
 9 considering an authorization, appropriation, or any
 10 other measure affecting the authority, function, or
 11 funding of the recipient or the Corporation, or is
 12 conducting oversight of the recipient or the Cor-
 13 poration.”.

14 (e) Subsections (g) and (h) of section 1007 of the Act are
 15 repealed.

16 FINANCING

17 SEC. 5. (a) Section 1010(a) of the Act is amended by
 18 inserting immediately after the second sentence the following
 19 new sentence: “There are authorized to be appropriated for
 20 purposes of carrying out the activities of the Corporation
 21 \$296,000,000 for fiscal year 1984, and such sums as may be
 22 necessary for each of the two succeeding fiscal years.”.

23 (b) Section 1010(a) of the Act is further amended by
 24 inserting “(1)” after “(a)” and by adding at the end thereof
 25 the following new paragraph:

1 “(2) Whenever the Board includes less than six mem-
2 bers who have been appointed and are qualified in accordance
3 with section 1004(a) appropriations for that fiscal year shall
4 be used by the Corporation in making grants or entering into
5 contracts under section 1006(a) (1) and (3) so as to insure
6 that annual funding for each current grantee and contractor
7 is maintained uninterrupted for that fiscal year under the
8 same terms and conditions as were applicable in the previous
9 fiscal year. If the appropriation for the fiscal year to which
10 this paragraph applies is the same amount as was appropri-
11 ated in the previous fiscal year, the annual funding for that
12 fiscal year for each grantee or contractor shall be the same as
13 in the previous fiscal year. If the appropriation for the fiscal
14 year to which this paragraph applies differs from the previous
15 fiscal year, the annual funding for each grantee or contractor
16 for that fiscal year shall be an amount which bears that same
17 ratio to the total appropriation for that fiscal year as the
18 amount paid to each such grantee or contractor for the previ-
19 ous fiscal year bears to the total appropriation to the Corpo-
20 ration in the previous fiscal year.”.

21 (c) Section 1010(c) is amended by striking out the semi-
22 colon and all that follows, and inserting in lieu thereof a
23 period.

Senator EAGLETON. I will state only briefly that, in my view, the evidence is overwhelming that there is a need not only to continue the Corporation's activities but indeed to increase them. We are all aware that the Corporation's budget sustained a 25-percent cut back in 1982, and that funding reduction has meant the loss of about 1,546, or 24 percent, of all legal services attorneys and the closing of 354, or 24 percent, of all field offices. These staff and program reductions, when coupled with skyrocketing demand, have meant that the legal services programs in virtually every area of the country have been forced to provide emergency services only.

The Greater Miami Legal Services entity reports:

We continue to do what we call "survival issues." That's our focus now. People's food, shelter, and income. So in landlord tenant, we only do evictions and lockouts.

The Ohio State Legal Services Association reports:

Due to staff leaving, we've gone strictly to emergencies—either life threatening, absolute cutoff of money, termination of heat during the winter, a spouse being battered—before we can take out a domestic relations case. Numbers of poor requesting legal services who are being turned away because of budgetary limitations on the corporation are shockingly high.

In the State of Utah, Senator Hatch's own State, the Utah Legal Services had more than 10,000 requests for services in 1983, of which they could handle only 2,500 and 700 to 800 cases are being turned away each month.

In the State of Missouri, the eastern part thereof which includes St. Louis, has seen a 100-percent increase in demand, receiving 350 calls a week, of which it can see only 50.

The bill that we have introduced will by no means restore the goal of minimum access, which is defined as 2 lawyers for every 10,000 poor people. But at an authorized funding level of \$296 million in 1984, it would be a reasonable first step toward restoring an adequate financial base for the program. Thank you, Mr. Chairman.

Senator DENTON. Thank you, Senator Eagleton. I will recognize the distinguished Senator from Massachusetts, who came in earlier, Senator Kennedy, and then Senator Humphrey.

STATEMENT OF HON. EDWARD M. KENNEDY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator KENNEDY. Thank you, Mr. Chairman. It has been quite some time since this committee held a hearing to consider the operations of legal services, and I am sure that everyone present today is quite aware of the considerable activity that has occurred in the interim. While I do not intend to chronicle those events in any detail, I would like to make a few observations about their occurrence.

I found the pattern of hostility displayed by the administration toward the Legal Services Corporation highly disturbing. Confrontations caused by this hostile attitude have disrupted the operations of the Corporation and its grantees around the country. And in the end, the ones who pay for this disruption are the many poor clients who depend so much on the effective legal representation that legal services attorneys provide.

My concern over the treatment of the Legal Services Corporation under this administration has also been heightened by the statements and actions of some members of the Board that he has appointed. Their statements and actions have raised serious doubts in my mind as to their dedication to the preservation of the effective provision of legal services to the poor.

I think that this Congress has acted in both a cooperative and a progressive manner, despite being forced into repeated confrontations by this administration's actions. I prefer not to run the Government or an organization as important as the Legal Services Corporation in a negative manner, constantly thwarting the will of the President or constantly scrutinizing every action of its appointees. I would prefer to cooperate with the President to have confidence in his appointees. And I prefer to concentrate in improving the operation of the Corporation, expanding the effective provision of legal services to the poor.

That is why I have joined nine other members of this committee in cosponsoring legislation, introduced by Senators Eagleton, Weicker, and Stafford, which would extend the authorization of the Legal Services Corporation, which I believe would improve the Corporation. But so long as the administration chooses confrontation rather than conciliation, I and a majority of this Congress will continue to act to protect the program.

Mr. Bogard, as President of the Corporation, I understand that you have appeared before other Senate and House committees to ask for the removal of certain provisions which restrict the discretion of any corporation board which is unconfirmed by the Senate. I am sure that it comes as no surprise to you when I tell you that I will work to insure those restrictions are not removed. So long as this President, his appointees to the Board, and their officers and employees continue to frustrate the will of the Congress and the mandate of the law, you have no right to come here and ask for such discretion to be returned. You and Board members have only yourselves and the President to blame for the current situation. You should be going to the President and not coming to the Congress. Congress chose to tie your hands in this matter only after considerable provocation, and this administration and its appointees must realize that they cannot pick and choose the laws they want to enforce. Their obligation and yours is to see that all the laws are faithfully executed, and that is your constitutional duty.

I quite frankly agree that this is no way to run a railroad, but we acted as we did because we feared that there would be no railroad left to run, as long as this administration continues what my colleague, Senator Rudman, called "its unending guerrilla warfare to undermine congressional action," we have no choice but to continue to run it in this manner.

I have heard the President and members of the administration and some of the Board members that he has appointed say that they support the concept of legal services for the poor. However, they want to return to the old days when the private bar had the exclusive voluntary duty to provide such services. They fail to recognize that the private bar alone cannot do the job, and the bar, above all else, realizes that. The American Bar Association consistently has been the biggest supporter of the creation of the Corpora-

tion, not because they want to shirk their social responsibilities—as the President's adviser, Mr. Meese, has often implied—but rather they recognize the stability and expertise provided by the federally supported legal services program.

Critics have charged that legal services attorneys are overzealous in their challenges to community institutions and, too often, involved in controversial cases. They are right. Legal services attorneys, supported by the Corporation, do involve themselves in controversial cases. They do challenge important community and national institutions. But these attorneys do so not to advance their own political or social agenda, as so many of these critics charge. They do so to defend the interests of the poor Americans who are their clients, and these poor Americans deserve the same kind of zealous representation that any other citizen would receive from his or her attorney.

It is with these controversial cases that the American system of justice is truly challenged to provide equal justice for all, and the Legal Services Corporation allows it to meet that challenge successfully. Thank you.

Senator DENTON. Senator Humphrey?

Senator HUMPHREY. I have no opening statement.

Senator DENTON. Now our first witness, the President of the Legal Services Corporation, Mr. Donald Bogard. Perhaps you would care to introduce your colleagues at the table.

STATEMENT OF DONALD P. BOGARD, PRESIDENT, LEGAL SERVICES CORPORATION, ACCOMPANIED BY DENNIS DAUGHERTY, VICE PRESIDENT, OPERATIONS; CHARLES RITTER, VICE PRESIDENT, FINANCE; ALAN SWENDIMAN, GENERAL COUNSEL; AND GREGG HARTLEY, DIRECTOR, OFFICE OF FIELD SERVICES, LEGAL SERVICES CORPORATION

Mr. BOGARD. Thank you, Mr. Chairman. It is a pleasure to be here today to appear before this committee. The people with me at the table are, on my left, Alan Swendiman, who is the General Counsel of the Corporation, and Dennis Daugherty, who is the Vice President of Operations. On my immediate right is Charles Ritter, Vice President of Finance, and on his right is Gregg Hartley, who is our Director of the Office of Field Services, which is our program office.

I would like to extend apologies for Mr. McCarthy, our Board Chairman who is not able to be here today. He had made some scheduling changes when he thought the hearing was going to be on the 3d, and when we ended up being here on the 4th, he had to go back to California. But he wanted to thank you for the opportunity to appear.

Senator DENTON. I have been advised to ask you, on behalf of the chairman, to summarize your comments in 5 or 10 minutes to permit more questions.

Senator KENNEDY. He could not stay the extra day, as Chairman of the Board?

Mr. BOGARD. He had some scheduling changes. He made some shifts of things that were due today to tomorrow, and he was unable to make that shift back on short notice.

We have prepared a written statement which we would like to have included in the record, Mr. Chairman.

Senator DENTON. It shall be included, without objection.

Mr. BOGARD. I would like to point out that we are here today seeking reauthorization of the Corporation. We are here seeking additional funding, as we have been before the House and Senate Appropriations Committee, and before your counterpart in the House, seeking reauthorization of the Corporation.

In November 1982, my predecessor recommended that the Corporation request an additional budget of 6.7 percent, which would be an inflationary factor increase, to take us to the level of \$257 million. As you have indicated, we have been at \$241 million for the past 2 years. That recommendation was adopted by the Board at its December meeting, and they instructed me to come forward with that submission which we did make to the Congress.

We would like to see that amount of money granted to us. If the Congress decides it would like to give us more money, we would be pleased to have it. We will attempt to spend it in the most effective and economical and efficient ways in which we can.

The Board, as another action it took in December, authorized me to issue grants to all of the field programs at the same level at which they were funded in 1982. As a result of that, the 292 basic field programs, the Native American programs of which there are 10, and the 2 migrant programs were also refunded at their 1982 levels.

We feel that the Corporation is moving forward, that we are able to provide the services that we need to be able to provide, and would suggest that in the reauthorization you consider three or four points that would be of benefit to our Corporation.

I would like to see the language of the second continuing resolution carried forward, which would relate to the governing boards of the local recipients. That requires involvement by the majority bars of the areas in which the recipient is being funded. We would also like to see that the language of the second continuing resolution, regarding legislative activity, be carried forward. We would like to see that there be some simplifying of the hearing process regarding refunding. It is a very long, extended process at this point, and we feel there should be some way to simplify that.

Fourth, we would also like to see a restriction removed that was placed in the second continuing resolution. Specifically, I want to refer to the restriction which requires us to refund grantees at their previous level, in the absence of a confirmed board. The reason that is important to us is, the 1982 grants were based upon 1970 census data. We did not have 1980 census data at the time the grants were issued this year. Those data have been received and show us that there has been a growth of approximately 1 million poor persons over the country, but the important point is that they have shifted in their locations. As a result, we would like to be able to go into those programs that show a substantial increase in poor people and give them more money. In effect, we would put the money that we are given by the Congress to serve the people where they actually reside.

We feel that the restriction on us now prohibits us from doing that. The Board did request that there be a grant condition on each

grant last year, which gave us the authority but as a result of the restriction in the continuing resolution, we are not able to utilize that option.

We also would like to see that the private bar not be arbitrarily excluded from the delivery of legal services. The decrease in funding that has happened in 1981 has had a significant impact on the private bar. They are taking more and more cases, becoming more involved in areas in which they can develop programs to insure the delivery of legal services, and I would like to see that continue.

That concludes my remarks, Mr. Chairman. I would be delighted to respond to any questions you have.

[The prepared statement of Mr. Bogard follows:]

TESTIMONY BEFORE THE SENATE COMMITTEE ON
LABOR AND HUMAN RESOURCES

By
Donald P. Bogard
President
Legal Services Corporation
May 4, 1983

Mr. Chairman and Members of the Committee:

It is a pleasure to appear before you today to offer testimony regarding reauthorization of the Legal Services Corporation. I value your advice and constructive criticism and look forward to working closely with you during my term as president. In recent testimony before the House and Senate appropriation committees, I requested a 6.7 percent increase in our budget. Today, I am here to ask that the Legal Services Corporation be reauthorized. I took this job to give LSC strong leadership, sound management and responsible direction, not to dismantle it or wind it down. I believe a proper legal services program should be independent and non-political. It should devote its resources to the delivery of services. I hope that my remarks today will assist the Committee in the reauthorization process and in carrying out its oversight responsibilities.

The Corporation and its recipients have largely succeeded in maintaining a nationwide legal service delivery system. This has been possible through consolidation of outlying offices to save overhead; more use of WATS lines to reduce the need for outlying office expenses; utilization of computers; greater emphasis on preventive law and trained lay advocates; and finally the contribution of a substantial amount of time by members of the private bar. During FY '83, the Corporation was funded at the level of \$241,000,000, the same amount of funding granted by Congress for FY '82. At its December 16 - 17, 1982, meeting, the Board of Directors of the Corporation voted to direct the staff to submit a budget request to Congress for \$257,000,000.

The decision of the Board was made following a staff recommendation in November that an inflation factor of 6.7 percent be added to the amount appropriated for FY '83. The basis for the 6.7 percent was the estimated rate of inflation by the Office of Management and Budget in its mid-session review. While that rate was not sufficient to offset the actual amount of inflation for the past two years, the Board felt that it was a realistic increase based upon the budgetary decisions this Congress will be called upon to make.

Another decision made by the Board of Directors at its December meeting was to fund all legal services programs for FY '83 at the same

level at which they were funded for FY '82. Thus, the 292 basic field programs, the ten Native American programs, and the two migrant programs, all received the same funding as last year. The Board also voted to fund the 17 national support centers and the five state support centers at their annualized levels, and to give those programs the first six months of their grants while a study was being conducted regarding the continuation of those grants. State support components of basic field programs were likewise funded at their annualized levels for six months.

After the Board meeting, Congress passed the Second Continuing Resolution, P.L. 97-377 which directed that the funds appropriated thereunder were to be used to insure that the funding for all FY '82 grantees and contractors be continued at their same annualized funding levels in FY '83 until action is taken by a Board of Directors confirmed by the Senate. At its March 15 meeting, the Board voted to make three more months of funding, previously placed in reserve for the support centers, available at the same level. If there is no confirmed Board of Directors by September 1983, the final three months of funding will be made available at the same rate. We are conducting a review of national and state support for the purpose of ascertaining whether our limited resources could be better used in the direct delivery of services than in the purchase of support from those entities. Pursuant to those directives, we have conducted a thorough review of existing literature over the last few months and we will soon commence a survey of field attorney needs for, and experience with, support services. I cannot predict what the outcome of our review will be. I can assure you of our intent to observe carefully the terms of the Continuing Resolution which require that we maintain the FY '82 annualized funding levels for all grantees absent decisions by a confirmed Board of Directors.

A third funding action taken by the Board at its December meeting was to award an additional \$1,000 to each of the basic field, migrant, and Native American programs specifically for the purpose of providing training for the client representatives sitting on the governing boards of those programs. This funding will be used to assist those clients to learn more about the decisions they will be called upon to make during their service to those boards.

During the past year, the Board of Directors made other decisions which affected the operation of all legal services programs. One of those matters involved approving an Instruction on Fund Balances. This Instruction was adopted after the Board discovered in mid-1982 that the field programs had fund balances of approximately \$41,000,000. Realizing that some fund balance carryover is to be expected from one year to the next, but also desiring that the funds appropriated by Congress be utilized to provide the direct delivery of legal services to the poor during the year in which those funds were appropriated, the Board's Instruction allows each program to carry over 10 percent of its annualized grant and provides the right to petition the Corporation to increase that percentage to 25 percent upon a showing of good cause. Any carryover in excess of 10 percent or the level permitted by a specific

waiver will be set off against the succeeding year's grant award. This circumstance illustrates the importance of making local legal service recipients accountable to a strong Legal Services Corporation.

The LSC Board also decided to set aside resources to investigate and promote "New Directions for the Private Bar." Congressional interest in greater participation by the private bar in legal services delivery and the Corporation's commitment to leveraging its appropriation to secure additional legal assistance from the private bar require adequate financial support to accomplish those objectives effectively. These funds can be made available for projects sponsored by state bar associations, such as those designed to encourage private attorney participation, implement innovations in local delivery systems, and develop alternative sources of financial support. It is our expectation that this relatively small amount of LSC funds will generate a substantial return in the number and quality of attorney hours devoted to assisting those unable to afford counsel.

In that regard, the Corporation jointly sponsored a national conference in Tampa, Florida, to discuss a new program called IOLTA, Interest on Lawyer Trust Accounts. I know from my appearances before other congressional committees that those members who are familiar with the IOLTA program are very enthusiastic about it. It holds great promise, and I intend to move rapidly in assisting states that want to implement it.

The IOLTA program first gained prominence in Florida. A voluntary program was adopted in that state whereby funds held in lawyer trust accounts could be invested in the newly created Negotiable Order of Withdrawal (NOW) accounts if those funds were of a small amount or held for a short duration so that they could not be invested for the benefit of the client. By accumulating those funds into one account and paying interest on the average monthly balance to a third party for the benefit of legal services to the poor, bar leaders hoped to supplement LSC funds by a significant amount. Thus far, after receiving funds since May, 1981 from nearly 15 percent of the Florida attorneys with trust accounts (partially through the assistance of a LSC implementation grant) the Florida Bar Foundation has received over \$1,000,000 and is starting to distribute grants. As the program's successes are publicized and more attorneys sign up, even greater sums will be collected. Estimates are that for every 2,000 additional lawyers added to the program in Florida, \$1,000,000 per year will be collected.

New Hampshire and California have approved IOLTA programs and are now receiving interest. Other states have also approved IOLTA programs, including Maryland, Colorado, Minnesota, Idaho, Illinois, Nevada, Virginia and Oregon, although none of those states has started collecting funds at this time.

After attending the Florida conference, I became aware that substantial amounts of supplemental funds could be generated to provide

legal assistance to the poor in civil legal matters if most states would adopt IOLTA programs. Thirty-five states are now in various stages of studying those programs, and, therefore, the Legal Services Corporation decided to provide the centralized organization needed to expand IOLTA programs. In late March, a meeting was held here in Washington. As a result, plans are under way to establish a national IOLTA clearinghouse which will be funded by a grant from the Corporation. That clearinghouse will work with all of the states to transmit materials developed in other states which can speed up the process of adoption of a program. In addition, it will send recognized experts to work with the states in accomplishing the adoption process. If a state determines to adopt an IOLTA program, then LSC will make funds available by grant to implement the program.

Based upon the Florida experience, it is realistic to estimate that tens of millions of dollars could be added to current LSC funding to provide legal services to the poor in civil matters if thirty to forty states were to adopt IOLTA programs. This supplemental funding, created from private sources through the catalytic efforts of the Legal Services Corporation, will significantly enhance the direct delivery of daily legal services to the poor.

A second program underway by the private bar which is equally as exciting as the IOLTA program although not as expansive in scope, is the pro bono effort sponsored by the American Corporate Counsel Association. There are approximately 30,000 lawyers in the United States practicing as in-house counsel to private corporations. The ACCA is attempting to organize a nationwide program following the lead of various major corporations such as Aetna Life and Casualty, Xerox, Boise Cascade, IBM and others, whereby corporate counsel provide legal assistance to poor people located in their communities. The Legal Services Corporation was contacted by the ACCA and is attempting to determine in what ways it can be of assistance. Representatives of LSC are now attending meetings of the ACCA pro bono committee, reviewing training materials and offering comments, making various publications and training materials available, and examining other ways in which it can assist this very worthwhile effort, just as the Corporation has supported past and continuing efforts to increase private attorney involvement by the ABA, NBA, and others.

A third important decision by the Board was to create the Office of Inspector General to provide an independent mechanism to investigate problems or complaints which may arise concerning recipients and the Corporation. The Inspector General, an Officer of the Corporation, will report directly to the Board. Even though that function was only recently created and has not been filled, the processing of complaints is being organized and implemented by attorneys in the Corporation's Office of Compliance and Review in anticipation of selection of an Inspector General by the Board in the near future.

While all of this was going on, LSC recipients continued to provide civil legal services to the poor. Recently collected figures show that

during FY '82, those recipients closed 1,141,481 cases compared to 1,221,594 cases in FY '81 and 1,203,853 in FY '80. Average salaries for all personnel continued to rise as did the average years of experience of attorneys, managing attorneys, and program directors. Most states experienced increases during calendar year 1982 in the number of attorneys in the basic field programs. Nationwide, there was an increase in the total non-attorneys and secretarial/clerical employees in LSC programs from 1982 to 1983.

At this time, nearly ninety-six percent of the requested FY 1984 budget is targeted for grants to qualified programs engaged in the direct delivery of civil legal services to eligible clients. The remaining amount will be allocated for central management and administration, central and regional grant management, and the evaluation and monitoring of local legal services programs.

During 1982, the Legal Services Corporation continued to maintain nationwide geographical coverage, while taking significant steps to focus LSC resources on the needs of individual clients seeking counsel and courtroom representation. Congress prohibited legal services attorneys from initiating communications with elected officials, either directly or indirectly, which are designed to support or defeat legislative proposals. That Congressional action makes available additional attorney time for those critical access functions which, unlike lobbying, cannot be performed by poor persons without the assistance of trained legal counsel.

As President of LSC, I intend to see to it that these congressional directives are carried out in letter and spirit. I would welcome congressional action to incorporate in our authorizing legislation, those riders or restrictions on appropriations bills which prevent our limited funds from being diverted away from the delivery of legal services and into inappropriate activities.

I would also urge Congress to remove several harmful provisions which were attached to the Second Continuing Resolution in December 1982. At that time, Congress approved certain provisions which contravene the clear intent of the Legal Services Corporation Act guaranteeing the Corporation's independence from political influence. Those provisions seriously restrict the Corporation's ability to fulfill its obligation to oversee effectively the expenditure of \$257 million.

As mentioned above, one proviso requires that each 1982 grantee and contractor be funded in 1983 at the annualized level at which each such grantee and contractor was funded in 1982 unless and until action is taken by a confirmed Board. That proviso conflicts with several statutory mandates of the Legal Services Corporation Act, including the statutory mandate that LSC "insure that grants and contracts are made so as to provide the most economical and effective delivery of legal assistance to persons in both urban and rural areas." 42 U.S.C. 2996f(a)(3). It also conflicts with the responsibility of the

Corporation to determine what "grants and contracts (other than those to programs furnishing legal assistance to eligible clients)... are necessary to carry out the purposes and provisions of this title." 42 U.S.C. 2996e(a)(1)(B).

The LSC Act does not contemplate that either Congress or the President would attempt to prescribe the identities of recipients of Corporation funds or the amount of their grants. Such decisions were committed to the president of the Corporation (42 U.S.C. 2996f(e)) who is to avoid the consideration of political factors in making those decisions. However, by P.L. 97-377, Congress has restricted the independent judgment of the Corporation's president on the basis of a distinction recognized by neither the Constitution nor the courts between the powers exercised by officials appointed by the President of the United States with the advice and consent of the Senate and those appointed during the recess of the Senate pursuant to Article II, Clause 3 of the Constitution of the United States.

That action could also have serious consequences in its application. Due to the unavailability of more recent information, 1982 funding levels were established utilizing 1970 census data which identified the location of those who had an income below the Official Poverty Threshold. However, a grant condition was imposed on all 1983 basic field grants which provides that those grants may be increased or decreased for the remainder of the grant year if the census data becomes available and the Board determines to implement a change based upon that data. Thus, the Corporation will be seeking relief from that provision during 1983, and such a requirement should not be carried forward to FY '84. Any mandate that the Corporation distribute funds in 1984 based upon information gathered in 1970 will result in a deficiency of funds in areas which experienced substantial increases in the number of poor persons since 1970. The use of 1970 census data, together with the practice of annualizing some funding bonuses that were awarded certain programs in the past, results in a very uneven pattern of legal services funding across the country in relation to the underlying poverty population. The Corporation's grant to Northeast Ohio Legal Services amounts to \$3.86 for every 1980 resident with an income below 100% of the official poverty threshold, while our grant to Alaska Legal Services amounts to \$17.20. Within California, funding ranges widely from \$4.25 per capita to the Legal Aid Society of San Diego to \$14.19 for the San Francisco Neighborhood Legal Assistance Foundation. I urgently request your assistance in obtaining freedom from the constraints of the Continuing Resolution so that I can deal with these disparities. Whatever circumstances existed in 1982 that prompted the adoption of this proviso guaranteeing refunding at current levels in 1983 should not exist in 1984 and must not be allowed to restrict the Corporation's ability to reach those who in 1984 need its assistance.

A second proviso of P.L. 97-377 prohibits compensation of Corporation Directors for services to the Corporation other than attendance at meetings of the Board. This proviso seriously inhibits the

Board's ability to make informed decisions and to oversee the affairs of the Corporation. Since 1975, when the Legal Services Corporation became operational, it has been the Corporation's policy to compensate the Directors for the time devoted to review and analysis of the various programs and activities of the Corporation. Time spent on visits to legal services programs, preparation for Board and Committee meetings, appearances before Congressional committees, and other activities of the Directors related to their duties as members of the Board have been compensated in accordance with Corporation regulations and clear legislative history of Section 1006(d)(2) of the Legal Services Corporation Act.

This proviso imposes a far more restrictive compensation standard on a board charged with overseeing a quarter of a billion dollar corporation than applicable to other boards and commissions with similar oversight responsibilities. Such restrictions should not be continued in 1984.

It is important to reemphasize the extent to which LSC works through local, independent programs. I have already mentioned that nearly 96 percent of our budget is given in grants to the field programs. Some programs cover large areas or whole states, some are local. Most use the staff attorney system but several use the Judicare system in which private attorneys provide service on a reduced fee basis. Other programs use a combination of delivery methods. Each recipient program is governed by a board of directors with broad authority to set policy. The local nature of our programs is a source of strength, but it is also the source of some problems. This Corporation does not deliver legal services, but selects and constantly monitors those who do and who, in turn, are accountable to locally selected governing boards composed of attorneys and eligible clients. The Corporation is the mechanism by which Congress holds accountable a diverse network of independent services providers.

I would urge the Congress to reauthorize the Corporation at a funding level consistent with our request, adjusted by inflation for succeeding years of the authorization.

Senator DENTON. Thank you, Mr. Bogard. I hope that the chairman returns in time for me to depart for the vote which is now on. If not, I will have to rely on Senator Humphrey getting back in time, since a member of the majority is supposed to chair. Otherwise, we will have to suspend for a few minutes.

Mr. Bogard, this committee heard last year that many attorneys do not donate even a minimal amount of their time to do pro bono work for the poor. What, if anything, does the Corporation do or have they been doing to promote private bar involvement?

Mr. BOGARD. In 1981, there was the requirement that 10 percent of the money granted to recipients be used for private bar involvement. We are in the process now of seeing how that is working and what kind of results we actually are getting from that expenditure of funds. In addition, we are also taking a new pot of money that was developed this year, called the New Directions for Private Bar, a fund of about \$3 million, and we are attempting to use that in developing various programs for implementation of private bar activities. One of those which is particularly important, I believe, is the IOLTA program, the interest on lawyer trust accounts. That is a program started down in Florida, whereby lawyers' trust accounts are placed in a common account, as far as purposes of drawing interest under the new negotiable order withdrawal [NOW] accounts. This allows interest to be paid on checking accounts.

By taking these trust funds, which are held for a short period of time or are of a small amount, and placing them in a common account, we are able to generate substantial amounts of funds.

Senator DENTON. Excuse me, Mr. Bogard. I, too, will have to depart, since we now have less than half the allotted time available to get to the floor. I will recess the hearing for, we hope, no more than 10 minutes. Assuming the chairman comes back before that time, having already voted, it will be less than 10 minutes.

[Recess taken.]

The CHAIRMAN. Mr. Bogard, I apologize, but we were over on the floor on the budget battle, and I just happen to have been fighting one of the battles and I could not come at the time. But I understand you have completed your formal statement.

I am going to submit a whole list of written questions to you, and without objection, I will put my opening statement in the record at the beginning of this hearing.

I understand that, unlike Federal employees, the legal services staff attorneys may go out on strike. Are they also permitted to organize workers on behalf of the union?

Mr. BOGARD. Yes, as long as it is not during office time.

The CHAIRMAN. As long as it is not during office hours, can they unionize?

Mr. BOGARD. Yes.

The CHAIRMAN. Are you aware that Gerald P. Cureton, a member of a Philadelphia law firm, was prevented from testifying before the House Subcommittee on Courts, Civil Liberties, and the Administration of Justice due to a gag order obtained by the Camden Regional Legal Services in Camden, N.J.?

Mr. BOGARD. No; I was not.

The CHAIRMAN. Mr. Cureton was to testify that the Camden office had organized migrant workers and encouraged them to strike. Were you aware of that?

Mr. BOGARD. No, sir, I am not familiar with that.

The CHAIRMAN. Would you check that out for us and give us whatever details you can give us?

Mr. BOGARD. We would be glad to.

The CHAIRMAN. Are legal services attorneys permitted to engage in school desegregation or busing cases?

Mr. BOGARD. They are not, according to the statute. There has been some interpretation which has been a little flexible, I think, in the past. The statute clearly says that they cannot be involved in matters relating to desegregation. But we have opinions of our previous General Counsel, back in 1980, which has equated the term "desegregation" with "busing," saying that when the Congress said desegregation it really meant busing. So therefore, if a case does not involve busing specifically, it is not a desegregation case and you can be involved.

The CHAIRMAN. What is the average percentage of a staff attorney's time spent on lobbying?

Mr. BOGARD. I have no way of knowing that. There are no records in our Corporation that would reflect it.

The CHAIRMAN. Do you know that some staff attorneys are alleged to have been lobbying on behalf of various causes?

Mr. BOGARD. Yes, that is constantly brought to our attention by complaints from people.

The CHAIRMAN. Do you agree with that; that they do lobby?

Mr. BOGARD. I agree that they do lobby. I do not agree that they should. I think we have a very limited amount of funding, and I do not believe that anybody feels we are meeting the need that we need to meet, and therefore I think that funding should be directed to the private direct delivery of legal services.

The CHAIRMAN. If you know, what is the average percentage of a staff attorney's time spent on class actions?

Mr. BOGARD. I do not have any records that would advise me of that.

The CHAIRMAN. But I take it there is quite a bit of time spent on class actions throughout the Legal Services Corporation?

Mr. BOGARD. There are class actions undertaken, and we have made an attempt to contact all of our recipients to make sure that they advise us of the status of those, the numbers, and things like that. But I could not tell you the amount of time involved.

The CHAIRMAN. Are staff attorneys required to keep timesheets so that management has some idea of how they spend each of their days?

Mr. BOGARD. No.

The CHAIRMAN. Don't you think that would be a good idea?

Mr. BOGARD. I think it would be an excellent idea.

The CHAIRMAN. Law firms have to do that. Almost any form of outside business has to do it. Would it help if you instituted some sort of management procedure so that they had to keep track of their time, what cases they are working on, and so forth?

Mr. BOGARD. I think it would be super. I just do not know if we can get it accomplished. They are all independent local organiza-

tions, and they set their own procedures and operating methods. However, we can indicate that it would be advisable for them to do so.

The CHAIRMAN. What is the total amount grantees spend annually to pay for the cost of staff attorney membership in organizations that lobby, if you know?

Mr. BOGARD. I do not know that figure. I understand there are organizations which receive dues from legal services recipients based upon a certain percentage of their grant. For example, I believe the National Legal Aid and Defenders Association receives something in the neighborhood of one-tenth of 1 percent of the grants as dues. If we have \$210 million of direct field funding would be \$210,000. There was some testimony last year, I believe, regarding project advisory group, and I think they received something like \$115 per \$100,000, and the amount of money was approaching \$180,000 altogether. But there are other organizations, and I do not have any way of knowing how much all of those amounted to.

The CHAIRMAN. I have a number of other questions, but I think I will put them to you in writing and turn to Senator Eagleton at this time.

Senator EAGLETON. Thank you, Mr. Chairman.

Mr. Bogard, the budget for the Legal Services Corporation in the last year of the Carter administration was \$321 million is that correct?

Mr. BOGARD. Yes.

Senator EAGLETON. And for 2 years now, the Corporation has been operating on about \$241 million; is that correct?

Mr. BOGARD. That is correct.

Senator EAGLETON. Have you been able to handle the problems and the litigation and the caseload and the clientele as satisfactorily on the \$241 million as you would had you had \$321 million available, in terms of timeliness, in terms of the number of cases handled, or the number of clients represented, by whatever measure you care to use.

Mr. BOGARD. We have figures which show the number of closed cases each year that come in from our recipients. In 1981, I believe the figure was 1.24 million. Last year, those figures were 1.14 million, a decrease of about 100,000 cases. So in absolute totals, we are serving fewer people. Now, the mix of cases may change. We may be handling more education cases and less divorce cases, and that may have some impact on the amount of time. But the numbers are down.

Senator EAGLETON. In my opening statement, I read a couple of quotes in the record, one from the Greater Miami Legal Services operation there, where they said "We continue to do what we call 'survival issues.' That's our focus now." Then the quote went on to expand on that. Then I quoted from the Ohio State Legal Services Association, wherein they said, "Due to staff leaving, we have gone strictly to emergencies" and then they elaborated on that quote.

Is it fair to say that in various parts of the country, Legal Services operations, because of budgetary constraints, have had to cut-back, and to reduce their staff, and to be more selective in the number of cases or clients they represent?

Mr. BOGARD. That is probably an accurate statement. Our figures show that the Greater Miami Legal Services is funded at the rate of about \$4.91 per poor person. As I mentioned in my opening remarks, if we were able to shift funding so that all funding was equal on a per capita basis around the country, we could increase their funding to \$6.64. The restrictions prohibit me from doing that. But they are definitely one of the areas that are underfunded, assuming we are trying to reach a uniform goal on funding. Incidentally, our average funding now is about \$6.20, so you can see they are substantially below the average.

Senator EAGLETON. You lay some significant emphasis on the utilization of the private bar in handling some of these matters, as opposed to Legal Services career personnel handling them. Would you care to elaborate on how efficacious you consider the role of the private bar in responding to the needs of the poor insofar as legal representation is concerned?

Mr. BOGARD. I believe it is improving, Senator. I am not sure it has been what it should be in the past. I certainly do not feel and have said on previous occasions that the private bar can do the entire job. However, there are enough attorneys out there that if they would each take two cases, they would be able to handle more cases than our Corporation did last year.

Senator EAGLETON. But that is the big "if." If you look at the abstract statistics and take the total number of lawyers licensed to practice law in the 50 States—I do not even know what that number is, but it is in the multithousands. If they each take two cases a year, indeed that could make a real dent in this problem. But the practicality is that they do not take two cases a year.

I have here an article from the Arkansas Gazette, and it talks about, interestingly enough, the Miami area again. I do not want to be picking on Miami, but that is what part of the article relates to. This Arkansas Gazette article says the State bar president—that means the Florida State bar, a fellow by the name of Sam Smith—asked a committee headed by a Miami lawyer named Neil Chonen to suggest ways in which that State's 29,000 lawyers might give pro bono—public service—representation to the needy. In response, 300 lawyers out of 6,400 in Dade County volunteered. So the Chonen committee came up with what was termed by the bar there as a shocking recommendation that every lawyer practicing in Florida either contribute 10 hours a year to serving needy clients or donate the equivalent of 10 hours of billable time. That would be \$1,500 for a lawyer who charges \$150 an hour. That, too, was rejected, especially the \$1,500.

I would encourage you to continue what you are doing to encourage the bar to try to take on a greater share of this burden, but I would not want to hold my breath until the time you got up to that two-case-per-lawyer figure. That should remain, I guess, as the utopian goal, maybe to be reached in the after-life.

Mr. Bogard, there have been some allegations about the individuals that you have chosen to fill some of the top positions in the Corporation. First, let me see if these are the facts.

Of those individuals who voluntarily left the Corporation or who have been terminated from consulting positions or permanent posi-

tions since December 13, how many of those—was December 13 your date of beginning?

Mr. BOGARD. Yes.

Senator EAGLETON. How many of those who have left from those senior positions were women or minorities?

Mr. BOGARD. I really do not have a figure on that. I can get the information.

Senator EAGLETON. We are told that maybe one of your associates with you at the table can clarify it, or perhaps some of your people out in the audience. We are told that there have been 17 people who have left. Some left voluntarily and perhaps some left under less than voluntary circumstances. But 17 left, and out of those 17 that left, 12 were women and minorities.

Mr. BOGARD. I would seriously challenge that answer. I do not think that is accurate at all.

Senator EAGLETON. Could you supply then for the record those folks who left and see if they were classified as women or minorities. Now, of those that had been hired since that date to permanent or consultant positions, how many of those hired have been women or minorities?

Mr. BOGARD. There have been 12 permanent hires since December 13, and out of that, 5 are either minorities or women.

Senator EAGLETON. Would you supply us with a breakdown of that?

Mr. BOGARD. Yes.

Senator EAGLETON. Does that include consultants?

Mr. BOGARD. No; it does not, just permanent hires. I do not have figures on the consultants, but I could get those.

Senator EAGLETON. OK. Get that for us. And of the permanent hires, 5 out of 12—

Mr. BOGARD. And those are positions all across the board, Senator.

Senator EAGLETON. Consultants you will supply us for the record?

Mr. BOGARD. Yes.

Senator EAGLETON. Now of those 12 hired to those permanent slots, how many had legal services experience?

Mr. BOGARD. I do not have a breakdown like that. I can get that information.

Senator EAGLETON. These are fairly high-ranking positions, are they not?

Mr. BOGARD. They can be all ranges: secretaries, staff assistants, attorneys, senior-level people.

Senator EAGLETON. How many of the 12 would equate to management-level employees, something above clerical?

Mr. BOGARD. We have the Director of Field Services, who is Mr. Hartley. We have the Director of the Office of Equal Opportunity. Those are senior-level people.

Senator EAGLETON. Those are the two relatively higher up individuals you have hired since December 13?

Mr. BOGARD. Other than my secretary; that is an executive assistant level. We have hired some staff attorneys in that group, but that does not necessarily mean that they are on—

Senator EAGLETON. What about the General Counsel? When was he hired?

Mr. BOGARD. The General Counsel is under a contract. He came on about the first of February, I believe. He donated——

Senator EAGLETON. That is since December 13.

Mr. BOGARD. I am talking about permanent people. He is on a temporary contract. He donated the first month of his time to us, and he is now working part time.

Senator EAGLETON. Are there other people of senior rank who are in a category like the General Counsel—that is, they are going to be there 1 year, 1½ years, or 2 years, whatever it is—who are not permanent?

Mr. BOGARD. When I came on in December, out of the nine senior staff positions, seven of the people were in an acting capacity. At the current time, five of those people are in an acting capacity, two of whom were in acting capacities prior to my coming on.

Senator EAGLETON. I am not concerned about whether somebody is permanent there until the millennium or acting. The General Counsel is an acting?

Mr. BOGARD. That is correct.

Senator EAGLETON. What about the Deputy General Counsel, Mr. John Meyer?

Mr. BOGARD. Yes; he is in an acting capacity. I am interviewing people for that spot now. Incidentally, the General Counsel position and the Deputy General Counsel position have both been posted, and we are in the process of interviewing.

Senator EAGLETON. When did Meyer come aboard?

Mr. BOGARD. I do not recall the date. I can supply that information.

Senator EAGLETON. The Director of Governmental relations, Mr. Streeter, when did he come?

Mr. BOGARD. Again, I do not have the date. I suspect it has been about 6 or 8 weeks.

Senator EAGLETON; He is since December 13?

Mr. BOGARD. Yes.

Senator EAGLETON. The Director of Public Affairs, Rex Rulen?

Mr. BOGARD. That is correct. He is also since December 13.

Senator EAGLETON. Are any of those names that I have mentioned or are any of the positions we have discussed been filled by either a female individual or a black or a Hispanic?

Mr. BOGARD. None that you have mentioned.

Senator EAGLETON. Are there any others you would like for me to mention?

Mr. BOGARD. As I indicated, the equal opportunity position has been filled with a black male.

Senator EAGLETON. One?

Mr. BOGARD. That is correct.

Senator EAGLETON. Well, give us a complete list of all people hired since December 13, with a salary level of above \$30,000, who their predecessor was, and the name of the individual they replaced, and indicate the sex and minority status of both the predecessors and the replacements.

Mr. BOGARD. All right.

Senator EAGLETON. Was there a rule or something on the books, or regulation, insofar as prior experience with legal services type work in previous times?

Mr. BOGARD. Can you expand on what you mean by that?

Senator EAGLETON. With respect to the employment of attorneys with the Corporation?

Mr. BOGARD. Not that I am aware of.

Senator EAGLETON. Was there a practice in previous times of giving preference in terms of employment to lawyers who had legal services experience?

Mr. BOGARD. There may have been. I have not seen anything to that effect.

Senator EAGLETON. Of all these people we have talked about a few moments ago, how many of them had prior legal services experience?

Mr. BOGARD. As I indicated, I do not know all the people.

Senator EAGLETON. These are pretty high-level positions. The titles I read off go to the very heart of the Corporation. It would seem to me you would know who it is that you are either hiring or serving with, albeit they are in an acting capacity.

Mr. BOGARD. The Director of the Office of Field Services, which is our program office, is filled by a person on a permanent basis who has legal services experience dating back to 1976. The governmental relations, public affairs, and General Counsel do not have previous legal services experience. Mr. Meyer, who is the Deputy General Counsel, has had some legal services experience. The Deputy in the area of field services, who is an individual I promoted, is a black male and also has experience in legal services.

Senator EAGLETON. What was your legal experience prior to this?

Mr. BOGARD. I have no legal services experience, other than litigating cases against the legal services organization.

Senator EAGLETON. Was that your main function as an attorney, litigating legal-service-type matters on the other side of the table?

Mr. BOGARD. It was not my main function. It was just one of the pleasures of the job. They are good adversaries.

Senator EAGLETON. That is all I have, Mr. Chairman.

Senator DENTON. Thank you, Senator. I will recognize, for the chairman who has departed momentarily, Senator Nickles from Oklahoma.

Senator NICKLES. Thank you, very much.

Mr. Bogard, I apologize for not catching all of your statement. I understand that you have been before this committee almost a couple of hours now, as there has been quite a bit of activity on the floor, as I am sure you are aware.

There have been a lot of complaints on legal services in the last several years, with different activities that the Corporation has been involved in, many of which many people felt were not in the best interest of and should not be activities in which the Legal Services Corporation should be involved. Some of these activities have received some notoriety, and so on. Have some of those cases which were quite common, particularly back in 1979 and 1980, still being carried on to any extent? I will mention some if you want examples.

Mr. BOGARD. That may be more helpful.

Senator NICKLES. There were some that dealt politically, lobbying efforts—

Mr. BOGARD. I am sure there are still lobbying efforts being undertaken by some of our people, and I am sure there are controversial cases being undertaken. If you have specifics you would like for us to look at, we can make an inquiry to see what is going on.

Senator NICKLES. Is it not illegal for the Corporation to be engaged in lobbying activities?

Mr. BOGARD. Under the continuing resolution this year, there are some new restrictions which cover that. Yes, sir.

Senator NICKLES. But it is only under the continuing resolution?

Mr. BOGARD. That is correct.

Senator NICKLES. Not under any statutory language as such?

Mr. BOGARD. None that has prohibited lobbying. It has been regulated somewhat, but it is now more regulated under the continuing resolution.

Senator NICKLES. Should we extend those prohibitions in the reauthorization?

Mr. BOGARD. I have requested that be done, because I feel that the money you do give us should be spent for the direct delivery of legal services. I do not think that lobbying is an activity that should be covered by the Corporation under the current status of funding.

Senator NICKLES. I would concur. If we did not have that prohibition in your reauthorization, would there actually be some lobbying activities?

Mr. BOGARD. I have been advised by a number of people in the programs that they feel that is a very essential aspect of their job, and I am sure that there would be lobbying activities if there were no restrictions carried forward.

Senator NICKLES. I very much concur with your statement, and I hope that if we do have legal services reauthorized, we would make those prohibitions.

There were a lot of other cases. I am looking at some older things that go back a few years. I am not going to start asking you about these individual cases now, but I may submit them to you for the record to see if these or any similar cases are still active and whether we have taxpayers' dollars involved in some of this activity. I would appreciate your response. I recognize the chairman's desire to move on, as we have several other panelists here and we are still on our first panel. Again, I thank you, and we probably will be submitting additional questions for you to find out maybe some of the other cases that are involved, some of which are of a controversial nature.

Mr. BOGARD. If I may, Senator, I have not taken the position that it is my responsibility to go back and ferret out all the horror stories that existed prior to my time. It is my responsibility to make sure that the organization functions effectively and efficiently now, and that is where I have been placing my emphasis.

Senator NICKLES. Are there still a lot of class action that have been taken, filed in many cases against State or local governments?

Mr. BOGARD. We have been advised that the number of class actions represents something less than two-tenths of 1 percent of all the cases. How that relates to the amount of time involved, I do not

know. The number of actual class actions is not great. How that relates to the delivery of services because of the expenditure of time, we cannot find out; it is not something that is in the records of the Corporation. We have, however, made a request of the programs to give us a listing of all the class actions in which they are involved.

Senator NICKLES. Mr. Chairman, I have no further questions.

The CHAIRMAN. Thank you, Senator Nickles. Thank you, Mr. Bogard.

Senator EAGLETON. May I ask one final question, Mr. Chairman?

The CHAIRMAN. Sure.

Senator EAGLETON. Mr. Bogard, yours is not a confirmable position. Thus, we in this committee have not had an opportunity to discuss matters with you, as it were. So as my final question, let me ask you a philosophical one.

You are the head man now of the Legal Services Corporation. You have an extraordinarily difficult job. Even under optimal circumstances, the job is difficult. But under circumstances where there is a war between the President and at least some Members of Congress over the Corporation and its future, it makes your job extraordinarily difficult. Give us your vision of the Legal Services Corporation. What is the beneficial role you can see it performing. What are the services that you think your leadership can ably provide? You are a lawyer of prestige and good reputation. You want to leave a fine record of public service, and that is what everyone does who serves in a public capacity. He wants to be able to say to his children or grandchildren; "I served well in my assignment." What is your vision of the Legal Services Corporation?

Mr. BOGARD. Senator, it is absolutely essential that we be able to provide access to the court system for everyone. Poor people should not be precluded from that access simply because they cannot afford it. I, therefore, hope that the Corporation can focus on that goal, which I think is the original intent of the statute. I would hope that we can totally direct the Corporation to providing the day-to-day legal services that people need. The emergency situations should be handled. Those other situations also should be handled, and I would hope that we can get our recipients to direct their efforts to that goal so that we can serve as many people as possible with the funding that you give us.

Senator EAGLETON. Well said. Thank you very much.

The CHAIRMAN. Thank you, Senator Eagleton.

Thank you, Mr. Bogard and your associates. We appreciate having you here today. We appreciate the testimony you have given, and we will keep the record open until the end of this week to send written questions to you, and we hope that you will answer them as expeditiously as possible.

Mr. BOGARD. We shall.

The CHAIRMAN. Our next two witnesses will be Mr. Howard Phillips, the national director of the Conservative Caucus, Inc., in Vienna, Va., and Diann Jenkins, from Pittsburgh, Pa. We will be happy to hear your testimony at this time.

I will just say this, having read through some of the testimony today, it is clear that several of the witnesses will raise serious allegations about Corporation activities. In order to get to the bottom

of these complaints, I would like for my staff to keep a list of these allegations, so that we can contact the legal service grantees involved for their response and, if necessary, ask Mr. Bogard to have the Corporation perform an investigation if necessary.

We will turn to you, Mr. Phillips. We would like you to summarize, but we want you to feel that you have enough time. Then we will go to you, Ms. Jenkins.

STATEMENT OF HOWARD PHILLIPS, NATIONAL DIRECTOR, THE CONSERVATIVE CAUCUS, INC., VIENNA, VA.

Mr. PHILLIPS. Senator Hatch, Senator Denton, Senator Nickles, Senator Eagleton, I appreciate the opportunity to be here.

On July 18, 1974, the Legal Services Corporation Act was approved by the U.S. Senate. On July 25, 1974, it was signed into law by Richard Nixon, who resigned the Presidency 2 weeks later. Next year will be the 10th anniversary of that enactment.

Federal funds appropriated to the Corporation have already totaled nearly \$2 billion. The Corporation has continued as a nonprofit corporation, chartered in the District of Columbia, without a new authorization since October 1, 1980. Present direct funding for the Corporation and its grantees goes forward at the rate of \$241 million per year under a continuing resolution. Indirect Federal funding and support from other sources amounts to millions more.

During the past decade, this committee has sanctioned the activities and employment of more than 20,000 public policy activists whose guaranteed salaries and control over the supply of a service made free by taxpayer subsidy have given them the freedom to organize, propagandize, lobby, litigate, patronize, and proselytize their preferred causes—unchecked either by market accountability or the close scrutiny of the people's elected representatives.

On those occasions when public attention has been drawn to the program's controversial activities, whether in the organization of political action groups, or involvement in ballot referendums, or the formation of lobbying coalitions and networks, or assistance to extremist causes of the radical left, the congressional reaction, if any, all too often has been to look the other way, amid pious pronouncements that such abuses are either incidental or unavoidable.

On other occasions, Congress has sought to contain abuses by passing regulations against proabortion activism, against homosexual proselytization, against representation of illegal aliens, against lobbying. Predictably, despite biennial assurances that the latest reforms have at last cured the abuses, the abuses have continued, ever more blatantly, ever more comprehensively.

There are many Members of Congress, perhaps a majority, who are genuinely concerned about Legal Services Corporation-related abuses, who at the same time do not wish to be characterized as being opposed to federally financed guarantees of legal representation of the indigent.

It is my hope that this year the Labor and Human Resources Committee will seek to accommodate genuine desires for reform during a period when, for the foreseeable future, continued funding of the Legal Services Corporation is assured and time for careful reflection is available.

Having gone for nearly 3 years without an authorization, there is no reason why, at a time when future funding is not in jeopardy, this committee cannot take a few months more to carry out the oversight responsibilities which have for so long been given a low priority by responsible authorizing committees in both Houses of Congress.

The American people have the right to observe and to inquire:

This corporation is nine years old. Where have our dollars gone? What are the political objectives and organizational alliances of those who control the 325 independent private corporations which benefit from LSC funding? To which organizations have tax dollars been reassigned? To which groups have dues been paid and benefits accorded? To which political training sessions and conferences have travel costs been subsidized?

What grassroots lobbying coalitions and activities have been inspired and coordinated by full-time Legal Services personnel? What publications, press releases, and media campaigns have been organized and produced at taxpayer expense to influence public opinion? To what degree have ideological activist groups, like the National Lawyers Guild and the American Civil Liberties Union, been subsidized by the in-kind assistance of the LSC, its grantees, and other groups to which funds have been laundered or personnel assigned?

On which policy questions and before which decision-making authorities have LSC-funded policy activists arrogated to themselves the right to define the public interest and to assert their self-proclaimed authority to act in behalf of the poor as a class? What obligations and commitments are made by LSC-funded groups and their personnel when, for example, they join a highly political union, such as the United Auto Workers? What obligations arise when LSC grantees or personnel accept supplemental funding from private foundations and other entities with policy agendas which may be in conflict with limited objectives intended for the Legal Services program by Congress?

In what ways are taxpayers subsidizing political activism when Federally-subsidized Legal Services personnel accept positions of responsibility with groups in active support of, for example, the Palestine Liberation Organization or various Central American Marxist-Leninist movements? Are quotas always in the interest of the poor? Is abortion advocacy or homosexual proselytization necessary to serve and uplift the Nation's needy? To what degree does the pursuit of supplementary legal fee awards, rather than the pursuit of justice, motivate attorney behavior or influence program priorities.

To the extent that, following a thorough review, abuses are found to exist—whether they are random or the result of asserted designs—I submit that remedies are to be found not in more regulation but in a fundamental redesign of the legal services program. True reform can be achieved by relying upon the checks and balances of a fee-for-service client-accountable system, rather than by continuing a bureaucratic system, however much regulated, in which satisfaction of consumer need and market demand is entirely at the discretion of subsidized service providers.

I believe that a conscientious effort by your committee to place the LSC in the sunshine of full disclosure and accountability will document the problems which, over the years, have been protested by thousands of concerned citizens. I am hopeful that you will undertake a comprehensive review of the LSC, asking its grantees to end the secretiveness which has all too often characterized their activities and to voluntarily subject themselves to the disclosure requirements of the Freedom of Information Act from which they are now exempt.

It is not unreasonable to ask that you withhold judgment, at least with respect to the nature of any future authorization, until all the facts are in. With respect to future funding, I recommend that you require grantees to self-certify at the time they apply for

new funding, under penalty of law, that they will refrain from certain specifically delineated proscribed activities. And to assure that the program will serve the interests of the indigent legal consumer, rather than the salaried LSC professional, I hope you will move to a system of service delivery which permits eligible clients to choose their own lawyers, whether through a lawyer-referral program utilizing the private bar, through vouchers, or through a process of permitting attorneys in private practice to take a charitable tax credit or deduction for indigent representation.

Thank you.

The CHAIRMAN. Thank you, Mr. Phillips.

Ms. Jenkins?

STATEMENT OF DIANN R. JENKINS, CITIZEN, PITTSBURGH, PA.

Ms. JENKINS. Mr. Chairman and members of the committee, I thank you for allowing me to come and speak with you today.

On November 6, 1981, a press release from the office of Pennsylvania Gov. Richard Thornburgh stated the following, expressing his gratitude at the safe release of the remaining hostages at Graterford State Prison:

While we have achieved the most important result of obtaining the safe release of these hostages, there are lessons for the future to be learned from this situation which should not be ignored. The ringleader in the attempted escape and hostage-taking is a three-time convicted murderer. He murdered a police officer and, while in prison, murdered a warden and a deputy warden. Nevertheless, Community Legal Services of Philadelphia insisted upon pushing for a court order in 1975, requiring that this convict be returned to the general prison population at Graterford. [Thus] one lesson that must certainly be taken from this situation is that never again should government permit "cause" groups or even the courts to place the purported rights of vicious criminals above the safety of law enforcement and correction officers without the strongest possible opposition.

According to Howard Thorkelson, executive director of the Pennsylvania Legal Services Center in Harrisburg, there is a difference between the kinds of cases taken on by legal services attorneys and those taken on by public interest legal groups. To quote, "It's acceptable for public interest groups to herald a cause." He continued on to say, "That's not true in legal service." How much further from the truth can we get? We have the Governor of Pennsylvania, a former U.S. attorney, stating it and the people who have been touched by and the resulting victims of the causes are fully aware of it.

In August 1981, I and three others filed suit against Neighborhood Legal Services Association in Pittsburgh. The suit was filed in the Allegheny County Court of Common Pleas as a complaint in equity. Specifics of the suit covered four main areas: First, payment of expert witness fees in violation of Pennsylvania State Supreme Court rulings; second, representation and litigation of class action suits in violation of the national and State charters of LSC; third, refusal to represent clients in matters of civil law, in direct violation of charter; and fourth, the names of the Neighborhood Legal Services board of directors, information which is supposed to be public but is not.

Our complaint, though encompassing payment of witness fees in two specific cases, both of which were class actions and covering questions of State law, was immediately carried to the Federal

court to a very sympathetic judge. Strangely, our attorney was never notified of the petition for removal to Federal court until a handwritten order from the judge was received.

The CHAIRMAN. Who was the judge in this case?

Ms. JENKINS. Gerald Weber. He was chief judge. He has now stepped down for Judge Teitelbaum but is still active on the bench.

In conversation with the Neighborhood Legal Services office, the attorney indicated that this was an oversight and he just forgot to mail the petition copy to us. In a flurry of paper, massive in its volume to cover a short period of time, the Federal judge determined that this case belonged in Federal court, citing that Neighborhood Legal Services was a Government agency and the employees were Federal officers. The case was dismissed by him because the questions asked were properly handled in the State courts where we had originally filed the suit. Additionally, he and the Third Circuit Court of Appeals to whom we took our case, stated that according to State and Federal laws, suits in equity could only be filed by stockholders in the corporation or by the board of directors. As a nonprofit corporation, Legal Services has no stockholders. As to the board of directors, we were asking for their identities in the suit because it was not public information.

As a matter of record, I eventually did receive a copy of the Neighborhood Legal and Pennsylvania Legal Services directors in August 1982, through direct pressure of my State senator, Frank Pecora, and my State representative, Mr. Ron Cowell. They, too, had difficulty but eventually obtained the list from the then Pennsylvania Secretary of HEW. For the benefit of a local newspaper reporter, who has still to this date not received a copy of this list, I respectfully request that it be made a part of these hearings.

The CHAIRMAN. Without objection, we will make it a part of the hearings.

[Information subsequently supplied for the record follows:]

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13/1/80

Office of the Director

429 Forbes Avenue 10th Floor, Allegheny Building, Pittsburgh, Pennsylvania 15219
(412) 255-6700

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Butler County Bar Association
145 Pittsburgh Road
Saxonburg, PA 16056
352-1630 or 282-2749

Gubernatorial/Public Sector Appointees

Hon. R. Stanton Wettick	Frank M. McClellan, Esq.	Harry Boyer, President
Court of Common Pleas	Temple Law School	AFL-CIO of Pennsylvania
Shuman Center	1715 North Broad Street	227 North Front Street
Pittsburgh, PA 15206	Philadelphia, PA 19122	Harrisburg, PA 17101
412/355-5953	215/787-8974	717/238-9351
Term 1984	Term 1981 *	Term 1979 *

Louise Brookins, Chair
State W.R.O.
1727 Ontario Street
Philadelphia, PA 19140
215/684-3600
Term 1981 *

Pennsylvania Bar Association Appointments

David H. Lehman, Esq.	Peter P. Roper, Esq.	Mercer D. Tate, Esq.
McNees, Wallace & Nurick	Executive Director	Gratz, Tate, Spiegel,
100 Pine Street	Pennsylvania Bar Assoc.	Ervin & Ruthrauff
Harrisburg, PA 17108	100 South Street	Two Girard Plaza, 25th Fl.
717/232-8000	Harrisburg, PA 17108	Philadelphia, PA 19102
Term 1984	717/238-6715	215/563-1900
	Term 1983	Term 1984

J. Richard Gray, Esq.	Allan H. Reuben, Esq.
Windolph, Burkholder,	Wolf, Block, Schorr
Stanton & Gray	& Solis-Cohen
53 North Duke Street	12th Fl. Packard Building
Lancaster, PA 17602	Philadelphia, PA 19102
717/299-7374	215/569-4000
Term 1982	Term 1982

Legal Services Representatives

Robert Racunas, Esq.	Ernest E. Jones, Esq.	Harvey Strauss, Esq.
Executive Director	Executive Director	Executive Director
Neighborhood Legal Services	Community Legal Services	Montgomery County Legal
Association	Sylvania House	Aid Service
429 Forbes Avenue	Juniper & Locust Streets	107 East Main Street
Pittsburgh, PA 15219	Philadelphia, PA 19107	Norristown, PA 19404
412/255-6700	215/893-5342	215/275-5400
Term 1983	Term 1984	Term 1984

Harold Funt, Esq.	F. Charles Petrillo, Esq.
Executive Director	Executive Director
Lehigh Valley Legal Services	Northeastern Pennsylvania
203 West Fourth Street	Legal Services
Bethlehem, PA 18015	410 Bicentennial Building
215/691-2473	Wilkes-Barre, PA 18701
Term 1982	717/825-8567
	Term 1982

Client Representatives

Dorothy Richardson	Jay Neuman	Vickie Freeman Roberts
Priority Planning Project	Resources for Living	State W.R.O.
508 Martin Building	Independently	1231 North Franklin Street
119 Federal Street	4721 Pine Street	Philadelphia, PA 19122
Pittsburgh, PA 15212	Philadelphia, PA 19143	215/235-8119
412/231-4466	215/476-2217	Term 1984
Term 1984	Term 1983	

Marian Detman	Ernestine Watlington	Alice Scott
598 East Seventh Street	2504 Evergreen Road	2039 Tustin Street
Tarentum, PA 15084	Harrisburg, PA 17109	Pittsburgh, PA 15219
412/226-1925	717/234-1421	412/261-5579
Term 1983	Term 1984	Term 1984

Lila Savage	Theron McNeil
912 Wallis Street	711 McIlvain Street
Farrell, PA 16121	Chester, PA 19013
412/981-4371	215/874-7363
Term 1985	Term 1985

Officers: President - David H. Lehman
Vice President - Ernestine Watlington
Secretary - Peter P. Roper
Treasurer - Dorothy Richardson

2/23/82

Note: Terms expire the day after the March annual meeting of designated year
* Continuing in office pending gubernatorial action

Ms. JENKINS. Having obtained a copy of the two boards, the names and affiliations struck me like a "Who's Who" of sorts. One name in particular came up in late July 1982. She was a witness against HUD in a class action case in the Federal court, called by Neighborhood Legal Services to give testimony. It was never apparently mentioned that she is a member of the State board of directors, the Neighborhood Legal Services board of directors, is second vice president of Neighborhood Legal Services, and treasurer of the Pennsylvania LSC.

A copy of a letter which I sent to the U.S. attorney arguing the case may be of interest to you and is enclosed in your packets. It was too late to impeach the witness by the time he got this information, but I feel it was grossly unethical for Neighborhood Legal Services to call one of their own board members and officers and not identify her as being so.

Mr. Chairman, as private citizens having collected money from door-to-door to pay an attorney to represent us, we find that the general public has no means of protection and no way to obtain relief from the local legal services offices. Constraints put on them by the Congress are continually violated, and there is absolutely nothing that can be done about it. In a report furnished to all of you, which I request be made a part of the record of this hearing, there are at least 18 fully documented class-action suits, all instigated by legal services recipients in just Pennsylvania. I respectfully suggest that there are many more that I am not aware of.

Mr. Chairman, I am a layman, unschooled in the law and not privy to all of the information available to the legal community locally or nationally, and yet I have been able to compile some very interesting and amazing information.

The reasons for the requests for information in our suit may be of interest to you. The people in the area in which I live were under attack by legal services. Our school district was being eliminated, along with four others, in a school busing and so-called school desegregation case. Because of the name-calling being perpetrated, we wanted to know just who was in charge to allow such things to happen. We wanted to know why they would object so vehemently as to go to court to obtain a gag order against us because we protested what was happening. They had a permanent injunction ordered without benefit of hearing, which I understand is supposed to be illegal.

We wanted to know why, in direct violation of State law, they were hiring expert witnesses, paying them thousands of dollars with supposed promises of more fees coming, when that money should have been spent on representing the poor. We wanted to know by what right they protested the hiring of Attorney John Hickton in Pittsburgh as solicitor of this forced-merged school district and subsequently had him fired by the judge.

We wanted to know why they were permitted to continue a class action case for over 10 years, when they had no apparent client except their own employee, a paralegal with no children in a public school. We wanted to know by what right they were being directed to object to a high school marching band, marching in a local com-

munity day parade. And we wanted to know why they apparently were trying to bring our transit authority to its knees and to the verge of total bankruptcy.

In that case, they were representing another organization, ACORN and were again hiring expert witnesses, paying large fees to a college student to design ridership fare zones. Community Legal Services in Philadelphia was simultaneously representing ACORN in a similar suit against the transit authority in Philadelphia. It was always my understanding that legal services was not permitted to represent organizations, and yet here were two non-profit organizations being represented by two nonprofit law firms. The legal services offices were supposedly chartered to represent eligible clients in matters of civil law. What in the world were they doing with activist organizations, spending their funding on suits such as this.

Their money, Mr. Chairman, was going into class action litigation. To quote one of their attorneys in a newspaper interview, "class action cases are usually costly." We already know that in the western Pennsylvania area, Mr. Chairman. What cannot be ignored is the fact that in all of these cases, the taxpayers are paying the costs of both sides in the litigation.

In the class action suit on behalf of the inmates of the Allegheny County Jail in Pittsburgh, the legal services attorney filed for reimbursement of fees of \$57,000, plus \$7,000 in court costs. In September 1982, the Federal judge awarded more than \$63,000 to Neighborhood Legal Services, to quote the legal services attorney in the case, "I worked for almost a year on that case." The attorney also said he did not originally plan to ask for fees when he brought the suit, but he said that the county's failure to cooperate with him all through the case made him change his mind. Mr. Chairman, that case was in the Federal court less than 2 years, and Neighborhood Legal Services filed for reimbursement of a total of \$64,000. Is that not double-dipping into the public tax coffers?

The case in Philadelphia, known as the *Whitman Park* case, has been called "The granddaddy of legal services class actions." According to the Philadelphia Bulletin in March 1981, Community Legal Services filed for reimbursement of \$4,505,255.63 in legal fees for their handling of this case alone. But I fear we have not seen anything yet.

The *Hoots* case in western Pennsylvania has been in the courts since June 1971, and I have been informed by two local reporters that Neighborhood Legal Services in Pittsburgh is in process of tabulating all of their costs in preparation for filing for reimbursement. I will be very interested to see those figures. The best guessimate we have from the local legal community is that this case, covering both sides of argument, has exceeded the \$10 million mark substantially.

You must remember that in this case, as well as in the case against the county and the transit authority, it is all being fully paid by the taxpayers.

By using their funding to pursue cases such as the *Hoots* case, to pursue something that literally nobody wanted and without the direction of any known eligible client, the use of tax money to keep after this case gives the appearance of a total misuse of public

funds and a complete lack of fiscal responsibility on the part of Neighborhood Legal Services.

Last October, the Pittsburgh police were called to the Neighborhood Legal Services board meeting to stop disturbances at that meeting. I have enclosed news clippings covering the incident, to which attention should be paid.

Charges of violations of ethics against some of the legal services attorneys were leveled by the board, and charges of budget mismanagement were leveled against the board by the attorneys. Who did what? We, the people who foot the bill for all of this, have no way of knowing. Their records are locked up tight, and the public has no access to them under any circumstances. In a letter I received from former Legal Services Director Dan Bradley in 1981, I was informed that the Freedom of Information Act does not apply to Legal Services or its recipients, and I fear that even Congress could not obtain full information on LSC; they are answerable only to themselves.

In conclusion, Mr. Chairman, let me make a very personal statement. I am wholly in favor of legal representation being available for people who cannot afford it. I feel that the original concept of legal services, as envisioned by the Congress in the 1960's, was commendable. But what we have now is a Legal Services that has been so bastardized as to render it useless to the poor and self-serving to those who are looking for a political gain. Too much money has been poured into the program without restraint and control, and at this point there may be nothing that can be done to salvage it.

It may be that the only true recourse Congress may have is to eliminate this program and to start something which follows the mandate. It is clear that the Legal Services Corporation has ignored laws and stepped far away from its mandate in order to create its own form of social change through the courts and removing that power from our elected representatives at all levels of government, including here in Washington.

As a final note; citizens are under no legal compulsion to take any interest or share in the Government or to insure that the political setup in city, State, or Nation shall be efficient, progressive, or even honest. But the absence of legal compulsion cannot absolve them of moral responsibility. Those who fail to make use of their political liberty can hardly be called good citizens, and on them falls the penalty for their negligence. They will get a government just as bad as they deserve.

If the citizens fail too long and too fully to exercise their political liberties, they may even lose them. To quote G. K. Chesterton:

A despotism may almost be defined as a tired democracy. As fatigue falls on a community, the citizens are less inclined for that eternal vigilance which has truly been called the price of liberty, and they prefer to arm only one single individual to watch the city while they sleep.

It is time for those watchers, mainly you, to take the steps necessary to eliminate Legal Services totally and to replace it with something truly concerned for the welfare of the poor. It is time to remove this very serious and dangerous national blight. Mr. Chairman, I thank you for your time and your attention, and I will be happy to try to answer any questions you may have.

The CHAIRMAN. Thank you, Ms. Jenkins.
[The prepared statement of Ms. Jenkins follows:]

Testimony of:

DIANN R. JENKINS

Before the U.S. SENATE COMMITTEE ON
LABOR AND HUMAN RESOURCES

Wednesday, May 4, 1983

INTRODUCTION

ON NOVEMBER 6, 1981, A PRESS RELEASE FROM THE OFFICE OF PA GOVERNOR RICHARD THORNBURGH STATED THE FOLLOWING.....EXPRESSING HIS GRATITUDE AT THE "SAFE RELEASE OF THE REMAINING HOSTAGES AT GRATERFORD STATE PRISON"....."WHILE WE HAVE ACHIEVED THE MOST IMPORTANT RESULT OF OBTAINING THE SAFE RELEASE OF THE HOSTAGES, THERE ARE LESSONS FOR THE FUTURE TO BE LEARNED FROM THIS SITUATION WHICH SHOULD NOT BE IGNORED." "THE RINGLEADER IN THE ATTEMPTED ESCAPE AND HOSTAGE-TAKING IS A THREE-TIME CONVICTED MURDERER. HE MURDERED A POLICE OFFICER, AND WHILE IN PRISON, MURDERED A WARDEN AND DEPUTY WARDEN. NEVERTHELESS, COMMUNITY LEGAL SERVICES OF PHILADELPHIA INSISTED UPON PUSHING FOR A COURT ORDER IN 1975 REQUIRING THAT THIS CONVICT BE RETURNED TO THE GENERAL PRISON POPULATION AT GRATERFORD." "(THUS) ONE LESSON THAT MUST CERTAINLY BE TAKEN FROM THIS SITUATION IS THAT NEVER AGAIN SHOULD GOVERNMENT PERMIT 'CAUSE' GROUPS, OR EVEN THE COURTS, TO PLACE THE PURPORTED RIGHTS OF VICIOUS CRIMINALS ABOVE THE SAFETY OF LAW ENFORCEMENT AND CORRECTION OFFICERS WITHOUT THE STRONGEST POSSIBLE OPPOSITION."

ACCORDING TO HOWARD THORKELSON, EXECUTIVE DIRECTOR OF PENNSYLVANIA
LEGAL SERVICES CENTER IN HARRISBURG, THERE IS A DIFFERENCE BETWEEN
THE KINDS OF CASES TAKEN ON BY LEGAL SERVICES ATTORNEYS AND THOSE TAKEN
ON BY PUBLIC INTEREST LEGAL GROUPS. TO QUOTE, "IT'S ACCEPTABLE FOR
PUBLIC INTEREST GROUPS TO HERALD A CAUSE...." HE CONTINUED ON TO
SAY...."THAT'S NOT TRUE IN LEGAL SERVICE."

HOW MUCH FURTHER FROM THE TRUTH CAN YOU GET?

WE HAVE THE GOVERNOR OF PENNSYLVANIA, A FORMER U.S. ATTORNEY,
STATING IT AND THE PEOPLE WHO HAVE BEEN TOUCHED BY AND THE RESULTING
VICTIMS OF THESE CAUSES ARE FULLY AWARE OF IT.

TESTIMONY

IN AUGUST, 1981, HAVING PURSUED SOME SPECIFIC INFORMATION FOR OVER A YEAR, I AND THREE OTHERS FILED SUIT AGAINST NEIGHBORHOOD LEGAL SERVICES ASSOCIATION IN PITTSBURGH. THE SUIT WAS FILED IN THE ALLEGHENY COUNTY COURT OF COMMON PLEAS AS A COMPLAINT IN EQUITY. SPECIFICS OF THE SUIT COVERED FOUR MAIN AREAS. 1) PAYMENT OF EXPERT WITNESS FEES IN VIOLATION OF PA STATE SUPREME COURT RULINGS. 2) REPRESENTATION AND LITIGATION OF CLASS ACTION SUITS IN VIOLATION OF NATIONAL AND STATE CHARTER OF LSC. 3) REFUSAL TO REPRESENT CLIENTS IN MATTERS OF CIVIL LAW IN DIRECT VIOLATION OF CHARTER. 4) NAMES OF NLSA BOARD OF DIRECTORS - INFORMATION WHICH IS SUPPOSED TO BE PUBLIC BUT IS NOT.

OUR COMPLAINT, THOUGH ENCOMPASSING PAYMENT OF WITNESS FEES IN TWO SPECIFIC CASES, BOTH OF WHICH WERE CLASS ACTIONS, AND COVERING QUESTIONS OF STATE LAW, WAS IMMEDIATELY CARRIED TO FEDERAL COURT, TO A VERY SYMPATHETIC NLSA JUDGE. STRANGELY, OUR ATTORNEY WAS NEVER NOTIFIED OF THE PETITION FOR REMOVAL TO FEDERAL COURT UNTIL A HANDWRITTEN ORDER FROM THE JUDGE WAS RECEIVED. IN CONVERSATION WITH THE NLSA OFFICE, THE ATTORNEY INDICATED THAT IT WAS AN "OVERSIGHT" AND HE JUST FORGOT TO MAIL THE PETITION COPY TO US.

IN A FLURY OF PAPER, MASSIVE IN ITS VOLUME COVERING A SHORT TIME, THE FEDERAL JUDGE DETERMINED THAT THE CASE BELONGED IN FEDERAL COURT, CITING THAT NLSA WAS A GOVERNMENT AGENCY AND EMPLOYEES WERE FEDERAL OFFICERS. THE CASE WAS DISMISSED BY HIM BECAUSE THE QUESTIONS ASKED WERE PROPERLY HANDLED IN THE STATE COURTS. ADDITIONALLY, HE STATED THAT ACCORDING TO STATE AND FEDERAL LAWS, SUITS IN EQUITY COULD ONLY

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BE FILED BY STOCKHOLDERS IN THE CORPORATION OR BY THE BOARD OF DIRECTORS.

AS A NON-PROFIT CORPORATION, LSC HAS NO STOCKHOLDERS PER SE!

AS TO THE BOARD OF DIRECTORS --- WE WERE ASKING FOR THEIR IDENTITIES
IN THE SUIT BECAUSE IT WAS NOT PUBLIC INFORMATION!

AS A MATTER OF RECORD, I EVENTUALLY DID RECEIVE A COPY OF THE NLSA
BOARD OF DIRECTORS AND OF THE PA LSC DIRECTORS. THIS WAS RECEIVED
THRU DIRECT PRESSURE OF MY STATE SENATOR, FRANK PECORA, AND MY
STATE REPRESENTATIVE, RON COWELL. THEY ^① ^② HAD DIFFICULTY BUT
EVENTUALLY OBTAINED THE LISTS FROM THE THEN SECRETARY OF HEW.

FOR THE BENEFIT OF A NEWSPAPER REPORTER IN PITTSBURGH WHO HAD ALSO
BEEN ATTEMPTING TO OBTAIN THOSE NAMES FOR NEARLY A YEAR, I ASK THAT
A COPY BE MADE A PART OF THE RECORD OF THESE HEARINGS.

HAVING OBTAINED A COPY OF THE NLSA BOARD, THE NAMES AND AFFILIATIONS
STRUCK ME LIKE A WHO'S - WHO OF SORTS.

ONE NAME IN PARTICULAR CAME UP IN LATE JULY OF 1982. SHE WAS A WITNESS
AGAINST HUD IN A CLASS ACTION CASE IN FEDERAL COURT. CALLED BY NLSA
TO GIVE TESTIMONY, IT WAS NEVER APPARENTLY MENTIONED THAT SHE IS A
MEMBER OF THE STATE BOARD OF DIRECTORS, THE NLSA BOARD OF DIRECTORS
AND IS SECOND VICE PRESIDENT OF NLSA AND TREASURER OF PA LSC.
A COPY OF A LETTER WHICH I SENT THE U.S. ATTORNEY ARGUING THE CASE
MAY BE OF INTEREST TO YOU AND IS ENCLOSED. IT WAS TOO LATE TO IMPEACH
THE WITNESS BY THE TIME HE GOT THE INFORMATION, BUT I FEEL IT WAS
GROSSLY UNETHICAL FOR NLSA TO CALL ONE OF THEIR OWN BOARD MEMBERS
AND NOT IDENTIFY HER AS BEING SO.

MR. CHAIMAN, AS PRIVATE CITIZENS, HAVING COLLECTED MONEY DOOR-TO-DOOR TO PAY AN ATTORNEY TO REPRESENT US, WE FIND THAT THE GENERAL PUBLIC HAS NO MEANS OF PROTECTION AND NO WAY TO OBTAIN RELIEF FROM THE LSC LOCAL OFFICES. CONSTRAINTS PUT ON THEM BY CONGRESS ARE CONTINUALLY VIOLATED AND THERE IS ABSOLUTELY NOTHING THAT CAN BE DONE ABOUT IT.

IT IS MY UNDERSTANDING THAT THE LSC ACT OF 1974 AS AMENDED EXPRESSLY PROHIBITS CLASS ACTION LITIGATION. BUT IN THE PITTSBURGH AREA ALONE WE ARE WATCHING "HOOTS VS PA", "ACORN VS PORT AUTHORITY", "SMITH VS. WETTICK", "LAWSON VS COON" AND MANY MORE.

IN A REPORT FURNISHED TO ALL OF YOU, WHICH I REQUEST BE MADE A PART OF THE RECORD OF THIS HEARING, THERE ARE AT LEAST 18 FULLY DOCUMENTED CLASS ACTION SUITS - ALL INSTIGATED BY NLSA AND OTHER LSC RECIPIENTS IN JUST PENNSYLVANIA. AND I RESPECTFULLY SUGGEST THAT THERE ARE MANY MANY MORE THAT I AM NOT AWARE OF.

MR. CHAIRMAN, I AM A LAYMAN - UNSCHOOLED IN THE LAW AND NOT PRIVY TO ALL OF THE INFORMATION AVAILABLE TO THE LEGAL COMMUNITY - AND YET I HAVE BEEN ABLE TO COMPILE SOME VERY INTERESTING AND AMAZING INFORMATION.

THE REASONS FOR THE REQUESTS FOR INFORMATION IN OUR SUIT MAY BE OF INTEREST TO YOU. WE, THE PEOPLE OF THE COMMUNITY IN WHICH I LIVE, WERE UNDER ATTACK BY NLSA. OUR SCHOOL DISTRICT WAS BEING ELIMINATED ALONG WITH FOUR OTHERS IN A SCHOOL BUSING AND SO-CALLED SCHOOL DESEGREGATION CASE. BECAUSE OF THE NAME-CALLING BEING PERPETRATED,

I WANTED TO KNOW JUST WHO WAS IN CHARGE TO ALLOW SUCH THINGS TO HAPPEN.

I WANTED TO KNOW WHY THEY WOULD OBJECT SO VEHIMENTLY AS TO GO TO COURT TO OBTAIN A GAG ORDER AGAINST US BECAUSE WE PROTESTED WHAT WAS HAPPENING. THEY HAD A PERMANENT INJUNCTION ORDERED WITHOUT BENEFIT OF HEARING WHICH IS SUPPOSED TO BE ILLEGAL!

I WANTED TO KNOW WHY, IN DIRECT VIOLATION OF STATE LAW, THEY WERE HIRING IN EXPERT WITNESSES, PAYING THEM THOUSANDS OF DOLLARS WITH SUPPOSED PROMISES OF MORE FEES COMING, WHEN THAT MONEY SHOULD HAVE BEEN SPENT ON REPRESENTING THE POOR.

I WANTED TO KNOW BY WHAT RIGHT THEY PROTESTED THE HIRING OF ATTORNEY JOHN HICKTON AS SOLICITOR OF THIS FORCED-MERGED SCHOOL DISTRICT AND SUBSEQUENTLY HAD HIM FIRED BY THE JUDGE!

I WANTED TO KNOW WHY THEY WERE PERMITTED TO CONTINUE A CLASS ACTION CASE FOR OVER TEN YEARS WHEN THEY HAD NO APPARENT CLIENT EXCEPT THEIR OWN EMPLOYEE, A PARALEGAL WITH NO CHILDREN IN A PUBLIC SCHOOL.

I WANTED TO KNOW BY WHAT RIGHT THEY WERE BEING DIRECTED TO OBJECT TO A HIGH SCHOOL BAND MARCHING IN A COMMUNITY DAY PARADE.

ADDITIONALLY, I WANTED TO KNOW WHY THEY WERE APPARENTLY TRYING TO BRING OUR TRANSIT AUTHORITY TO ITS KNEES AND TO THE VERGE OF TOTAL BANKRUPTCY.

IN THAT CASE, THEY WERE REPRESENTING AN ORGANIZATION - ACORN - AND WERE AGAIN HIRING EXPERT WITNESSES, PAYING LARGE FEES TO A COLLEGE STUDENT TO DESIGN RIDERSHIP FARE ZONES. CLS IN PHILADELPHIA WAS SIMULTANEOUSLY REPRESENTING ACORN IN A SIMILAR SUIT AGAINST SEPTA, THE TRANSIT AUTHORITY IN PHILADELPHIA.

IT WAS ALWAYS MY UNDERSTANDING THAT LEGAL SERVICES WAS NOT PERMITTED TO REPRESENT ORGANIZATIONS AND YET HERE WERE TWO NON-PROFIT ORGANIZATIONS BEING REPRESENTED BY TWO NON-PROFIT LAW FIRMS! THE LSC OFFICES WERE SUPPOSEDLY CHARTERED TO REPRESENT ELIGIBLE CLIENTS IN MATTERS OF CIVIL LAW. WHAT IN THE WORLD WERE THEY DOING WITH ACTIVIST ORGANIZATIONS SPENDING THEIR MONEY ON SUITS SUCH AS THIS?

DURING THE PERIOD OF 1980-81, WHILE AT THE PEAK OF THEIR FUNDING BOTH FROM THE FEDERAL GOVERNMENT AND FROM STATE GOVERNMENT, NLSA BEGAN TO TURN AWAY CLIENTS ON A WHOLESALE BASIS. THE BLITZ IN THE MEDIA BEGAN THAT THEY DID NOT HAVE THE MONEY TO HANDLE ANY MORE CLIENTS. WHERE WAS IT GOING? THEY WERE AT THE ULTIMATE OF FUNDING BUT NOT DOING THE JOB THERE CHARTERS CALLED FOR.

THEIR MONEY, MR. CHAIRMAN WAS GOING INTO CLASS ACTION LITIGATION. TO QUOTE ONE OF THEIR ATTORNEYS IN A NEWSPAPER INTERVIEW, "...CLASS ACTION CASES ARE USUALLY COSTLY." WE ALREADY KNOW THAT IN THE WESTERN PENNSYLVANIA AREA.

WHAT CANNOT BE IGNORED ALSO, IS THE FACT THAT IN ALL OF THESE CASES, THE TAXPAYERS ARE PAYING THE COSTS OF BOTH SIDES.

IN THE CLASS ACTION SUIT ON BEHALF OF INMATES IN THE ALLEGHENY COUNTY JAIL IN PITTSBURGH, THE NLS ATTORNEY FILED FOR REIMBURSEMENT OF FEES OF \$57,000 PLUS \$7000 IN COURT COSTS. IN SEPTEMBER, 1982, THE FEDERAL JUDGE AWARDED MORE THAN \$63,300 TO NLSA. TO QUOTE THE NLSA ATTORNEY ON THE CASE...."I WORKED FOR ALMOST A YEAR ON THAT CASE.""I HAVE KNOWN OF SUCH CASES WHERE THE ATTORNEY INVOLVED WOULD HAVE ASKED TWO OR THREE HUNDRED THOUSAND DOLLARS."

THE ATTORNEY ALSO SAIDHE DIDN'T (ORIGINALLY) PLAN TO ASK FOR FEES WHEN HE BROUGHT THE SUIT. BUT HE SAID THE COUNTY'S FAILURE TO COOPERATE WITH HIM ALL THROUGH THE CASE MADE HIM CHANGE HIS MIND.

MR. CHAIRMAN, THAT CASE WAS IN THE FEDERAL COURT ONLY TWO YEARS AND NLSA SUED FOR REIMBURSEMENT OF A TOTAL OF \$64,000. IS THAT NOT DOUBLE DIPPING INTO THE ¹⁹⁷⁴TAX COFFERS?

THE CASE IN PHILADELPHIA, KNOWN AS THE WHITMAN PARK CASE, HAS BEEN CALLED THE "GRANDDADDY OF LSC CLASS ACTIONS. ACCORDING TO THE PHILADELPHIA BULLETIN IN MARCH, 1981, COMMUNITY LEGAL SERVICES FILED FOR REIMBURSEMENT OF \$4,505,255.63. IN LEGAL FEES FOR THEIR HANDLING OF THIS CLASS ACTION CASE. BUT I FEAR WE HAVEN'T SEEN ANYTHING YET.

THE HOOTS CASE IN WESTERN PENNSYLVANIA HAS BEEN IN THE COURTS SINCE JUNE OF 1971 AND I HAVE BEEN INFORMED BY TWO LOCAL REPORTERS THAT NLSA IN PITTSBURGH IS IN PROCESS OF TABULATING ALL OF THEIR COSTS IN PREPARATION FOR FILING FOR REIMBURSEMENT. I WILL BE VERY INTERESTED TO SEE THOSE FIGURES. THE BEST "GUESTIMATE" WE HAVE FROM THE LOCAL LEGAL COMMUNITY IS THAT THIS CASE, COVERING BOTH SIDES OF ARGUMENT, HAS EXCEEDED THE \$10,000,000.00 MARK SUBSTANTIALLY. YOU MUST REMEMBER THAT IN THIS CASE, AS WELL AS THE CLASS ACTION AGAINST THE COUNTY AND THE TRANSIT AUTHORITY, IS BEING FULLY PAID FOR BY THE TAXPAYERS. BOTH SIDES ARE FROM OUR OWN POCKETS!

IN THE SUIT BROUGHT BY NLSA FOR ACORN AGAINST THE PORT AUTHORITY, LEGAL FEES BY MID AUGUST, 1981, WEREESTIMATED BY THOSE INVOLVED TO BE AT THE \$500,000 MARK AND THE CASE WAS JUST BEGINNING ITS APPEALS STAGE. THIS FIGURE ADMITTEDLY DID NOT COUNT THE COST OF STAFF AND PERSONNEL TIME. THAT SUIT HAD BEEN IN THE COURTS FOR LESS THAN ONE YEAR AND LOOK AT THE COSTS!

WITH THE EXPENDITURES OF THIS SORT, VAST SUMS OF MONEY ALLOCATED TO NLSA IN PITTSBURGH ARE BEING SIPHONED AWAY FROM THEIR MANDATED COURSE OF REPRESENTING ELIGIBLE CLIENTS.

BY USING THEIR FUNDING TO PURSUE THE HOOTS CASE ALONE, TO PURSUE SOMETHING THAT LITERALLY NOBODY WANTED AND WITHOUT THE DIRECTION OF ANY KNOWN ELIGIBLE CLIENT, THE USE OF TAX MONEY TO KEEP AFTER THIS ONE CASE GIVES THE APPEARANCE OF A TOTAL MISUSE OF PUBLIC FUNDS AND A COMPLETE LACK OF FISCAL RESPONSIBILITY ON THE PART OF NLSA.

THRU THE HISTORY OF THE HOOTS CASE, MORE THAN 400 DOCKET ENTRIES ARE LISTED DATING FROM JUNE OF 1971 to MAY, 1981 - PRIOR TO ANY APPEALS BEING FILED.

THE WORD BARRATRY HAS BEEN SPOKEN TIME AND AGAIN PERTAINING TO THE NLSA HANDLING OF THE HOOTS CASE. THEY ARE CONSTANTLY IN COURT DEMANDING SPURIOUS INFORMATION; DISCIPLINARY INFORMATION AND DATA BASED ON RACE; LISTS OF ALL TEXT BOOKS BEING USED OR PLANNED TO BE USED; RACIAL MAKE-UP OF ALL SOCIAL AND EXTRACURRICULAR ACTIVITIES IN THE SCHOOL DISTRICT AND FOR THREE YEARS PRIOR TO THE FORCED MERGER. IT HAS BECOME A WITCH HUNT, AN INQUISITION!

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IN SEPTEMBER, 1981, THE NLSA STAFF IN PITTSBURGH FORMED A UNION - THE IRON CITY LEGAL ASSISTANCE WORKERS. THEIR UNION REPRESENTATIVES HAVE BEEN ACTIVELY INVOLVED IN THE FORMATION OF THE WESTERN PA CHAPTER OF THE FAIR BUDGET COALITION - AN ADVOCACY AND POLITICAL ACTIVIST GROUP. THEY ARE INVOLVED HEAVILY IN VOTER REGISTRATION DRIVES AND DETERMINING VOTING BLOCKS TO PUT IN THEIR OWN CANDIDATES IN PUBLIC OFFICE. THEY WORK WITH OTHER GROUPS TO ORGANIZE DEMONSTRATIONS THROUGHOUT WESTERN PENNSYLVANIA.

I AM NOT SAYING THAT NLSA IS THE IMPETUS OF THE ORGANIZATION BUT THEY ARE DEFINITELY A PART OF THE MAKE-UP.

IT IS MY UNDERSTANDING THAT LSC EMPLOYEES ARE NOT PERMITTED TO WORK WITH POLITICAL ACTIVIST GROUPS AND ARE NOT PERMITTED TO LOBBY THE GOVERNMENT BUT I, AND YOU, BOTH KNOW THEY DO IT CONSTANTLY.

IN OCTOBER, 1982, THE PITTSBURGH POLICE WERE CALLED TO THE NLSA BOARD MEETING TO STOP DISTURBANCES AT THE MEETING. I HAVE ENCLOSED THE NEWS CLIPPINGS COVERING THAT MEETING WHICH SHOULD BE PAID ATTENTION TO. CHARGES OF VIOLATIONS OF ETHICS AGAINST SOME OF THE NLSA ATTORNEYS WERE LEVELED BY THE BOARD AND CHARGES OF BUDGET MISMANAGEMENT WERE LEVELED AGAINST THE BOARD BY THE ATTORNEYS. WHO DID WHAT? WE, THE PEOPLE WHO FOOT THE BILL FOR ALL OF THIS HAVE NO WAY OF KNOWING. THEIR RECORDS ARE LOCKED-UP TIGHT AND THE PUBLIC HAS NO ACCESS TO THEM. IN A LETTER I RECEIVED FROM FORMER LSC DIRECTOR, DAN BRADLEY, IN 1981 I WAS INFORMED THAT THE FREEDOM OF INFORMATION ACT DOESN'T EVEN APPLY TO LSC OR ITS RECIPIENTS. I FEAR THAT EVEN CONGRESS CANNOT OBTAIN INFORMATION ON LSC OR ITS RECIPIENTS. THEY ARE ANSWERABLE ONLY TO THEMSELVES.

IN CONCLUSION, MR. CHAIRMAN, LET ME MAKE A VERY PERSONAL STATEMENT.

I AM WHOLLY IN FAVOR OF LEGAL REPRESENTATION BEING AVAILABLE FOR PEOPLE WHO CANNOT AFFORD IT.

I FEEL THE ORIGINAL CONCEPT OF LEGAL SERVICES AS ENVISIONED BY CONGRESS IN THE MID 1960'S WAS COMMENDABLE.

BUT WHAT WE HAVE NOW IS A LEGAL SERVICE THAT HAS BEEN SO BASTARDIZED AS TO RENDER IT USELESS TO THE POOR AND ONLY SELF-SERVING TO THOSE WHO ARE LOOKING FOR A POLITICAL GAIN.

TOO MUCH MONEY HAS BEEN POURED INTO THE PROGRAM WITHOUT RESTRAINT AND CONTROL AND AT THIS POINT, THERE MAY BE NOTHING THAT CAN BE DONE TO SALVAGE IT. IT MAY BE THAT THE ONLY TRUE RECOURSE CONGRESS MAY HAVE IS TO ELIMINATE THIS PROGRAM AND TO START SOMETHING WHICH FOLLOWS THE MANDATE. IT IS CLEAR THAT LSC HAS IGNORED LAWS AND STEPPED FAR AWAY FROM ITS MANDATE IN ORDER TO CREATE ITS OWN FORM OF SOCIAL CHANGE THRU THE COURTS AND REMOVING THAT POWER FROM OUR ELECTED REPRESENTATIVES AT ALL LEVELS OF GOVERNMENT INCLUDING HERE IN WASHINGTON.

I ASK THAT THE BACK-UP INFORMATION WHICH I HAVE FURNISHED TO YOU BE MADE A PART OF MY STATEMENT AND I THANK YOU SINCERELY FOR LISTENING TO SOMEONE WHO CARES DEEPLY ABOUT THIS SUBJECT AND WHAT HAPPENS WITHIN THE WALLS OF THIS ILLUSTRIOUS SENATE AND THE CONGRESS.

THANK YOU FOR YOUR TIME AND IF YOU HAVE ANY QUESTIONS PERTAINING TO ANY OF THE INFORMATION I HAVE COVERED I WILL TRY TO ANSWER THEM FOR YOU.

As a final note: Citizens are under no legal compulsion to take any interest or share in the government, or to insure that the political setup in city, State or Nation shall be efficient, progressive or even honest. But the absence of legal compulsion cannot absolve them of moral responsibility. Those who fail to make use of their political liberty can hardly be called good citizens, and on them falls the penalty for their negligence-- they will get a government just as bad as they deserve. If the citizens fail too long and too fully to exercise their political liberties, they may even lose them. As G.K. Chesterton said, "A despotism may almost be defined as a tired democracy. As fatigue falls on a community the citizens are less inclined for that eternal vigilance which has truly been called the price of liberty, and they prefer to arm only one single individual to watch the city while they sleep."

The CHAIRMAN. Let me start first with Mr. Phillips. Do you believe that the current congressional prohibitions against lobbying by staff attorneys are effective?

Mr. PHILLIPS. I do not believe that there are any regulatory prohibitions which have been on the books or which are likely to be on the books which could effectively preclude a full-time staff attorney from engaging in lobbying activities. The fact of the matter is that there are States in which full-time legal services attorneys or representatives of legal services organizations are registered with the State legislature or performing representative services elsewhere.

I notice in the bill which Senator Eagleton has introduced that there is a provision, and correct me if I am wrong, for attorneys from the legal services program to provide lobbying assistance upon request when the interests of the program are directly affected. Senator, I believe that the problem with the program is not that it is not sufficiently regulated. No matter how many regulations you have, people in a free country can do things on their lunch hour, on their coffee break, on their own time.

I think the problem is that this is a program in which the power of purchase has been vested in the providers of services rather than the consumers of services. When you have a service which is free, the demand for that service will be unlimited. When there is a limited supply, those who control the supply will determine which demand gets satisfied. Since legal services is free, legal services attorneys can determine which requests for representation they can respond to.

It is understandable that legal services attorneys, in dealing with thousands of poor people with legitimate grievances, will reach the conclusion that it is more important to change the law than it is to provide representation in a specific case. I can understand the frustration of an attorney who says, "Gee, I have taken the same case over and over again, and the problem still exists. What we really need to do is lobby for changes in the law." Now, he has a perfect

right to do that. My objection is, I do not think it is appropriate for the Congress or for the executive branch to determine who shall be subsidized to define the public interest. I think that it either should be done in the private sector, in a manner which is accountable to the checks and balances of the marketplace, or it should be done in a way that the system vests the power of purchase in the consumer, the client, the poor person, rather than the attorney.

In other words, what I am saying is, instead of a staff attorney system, you should move to a voucher system, you should move to a tax-deduction/tax-credit system, or you should move to a lawyer-referral-service system, rather than having a separate, segregated system of justice for the poor, where some people have the right to define the public interest.

The CHAIRMAN. There has been much congressional debate over the use of class actions by legal services attorneys as a means to furthering their own political beliefs. Do you believe that by restricting the use of class actions the Congress can curtail political manipulation of the legal services program?

Mr. PHILLIPS. Once again, I would have to say I do not think regulation is the answer, Senator. The answer is to structure the program in such a way that the program is client-accountable rather than lawyer-accountable. Class-action suits do concern me to the degree that an attorney with a guaranteed salary is able to say: "This is the best way to spend my time. I am going to spend all of my time on this." I do not have \$241 million to have access to all of the information that Mr. Bogard or this committee can have access to, but from reading newspaper articles, I observe, for example, that in Orlando there was an organization called Greater Orlando Alliance for Legal Services, which supposedly only had two class-action suits. But there was a report in the Orlando newspaper that they spent the majority of the organization's time on those two class-action suits.

My concern is not just with that kind of distortion of accountability in this program. My concern is with the organization and representation of groups. It is the indirect subsidy of groups like the ACLU, the National Lawyers Guild. It is paying for conferences like the one that was held in Puerto Rico after the 1980 election, planning political strategy. There are many programs in the Federal Government concerning which I have philosophical disagreements, but the reason why this one concerns me most profoundly is not because of the lawsuits they bring, it is because of the lobbying, it is because of the organizing, it is because of the efforts to form public opinion and organize grassroots coalitions.

The CHAIRMAN. In your estimation, how important have the national and State support centers been in improving legal representation to the poor?

Mr. PHILLIPS. In improving it?

The CHAIRMAN. Yes; do you think they have improved it?

Mr. PHILLIPS. I believe that public policy is best determined by the elected representatives of people, or people who are duly accountable to those elected representatives.

I have a concern when I read, for example, the publication called Health Advocate, the newsletter of the National Health Law Program funded by Legal Services, which talks at taxpayer expense

about how if you deny women a federally funded abortion, you are doing them a great disservice. And there are similar publications by other legal services projects. I think that people in the private sector have a perfect right to argue about what ought to be public policy on abortion, but I do not think it is right to assume that the proabortion position is necessarily what is good for poor people. Frankly, I think abortion is especially bad for the poor, and federally financed abortion is especially bad for the poor.

On other issues there are two viewpoints, and I respect the right of people to have diverse viewpoints. But I would request that they respect my right not to have to subsidize the advocacy of their viewpoint.

The CHAIRMAN. Do you believe that there is a right to an attorney in civil actions as well as criminal actions.

Mr. PHILLIPS. No, Senator, and I know there are not a great many people who share my view. But I agree with the Supreme Court that while a case can be made for a right of representation in a criminal proceeding, the problem of applying that to a civil proceeding is that if you require the taxpayers to subsidize that, in many cases you have a situation where taxpayers themselves who are unable to afford legal representation are subsidizing it for others.

I would be less concerned about assuring it, I would be less concerned about the dollars expended, if there were a consumer-accountable system, if instead of having lawyers with guaranteed salaries who are in a position to set priorities you spent that amount of money through clients who came, for example, to the bar association or a lawyer referral service and said; "Here is my problem," and the referral service said; "Here are the attorneys in private practice. Pick one and go from there."

The CHAIRMAN. I have a lot of other questions for you, Mr. Phillips. What I would like you to do is submit to the committee, if you can, for this record as many illustrations that you can come up with of what you consider to be wrongful approaches by—

Mr. PHILLIPS. Senator, let me respectfully decline your invitation. My organization does not receive \$241 million from the Federal Government. We have a membership which contributes money to our support to work on a variety of projects. I do not believe it is my responsibility to find out what the Legal Services Corporation is up to. I think that is your responsibility, and I would argue that since this program will be celebrating its 10th anniversary this year, since it has done without an authorization since October 1980, since there is no immediate threat to its continued funding, since because of the Weicker amendment there is no authority on the part of Mr. Bogard to rearrange the grantees by their level of funding, that you use the time available to get this information yourself. I say that with all due respect, sir.

The CHAIRMAN. I understand. I do not disagree with you. What I am saying is, I am leaving the record open for you to submit any and all illustrations that you do have or that you have been able to uncover. I realize that you do not have \$241 million, but you are and have been very concerned about the Legal Services Corporation, and we want you to have every opportunity—

Mr. PHILLIPS. Senator, let me share with you some of my frustrations.

The CHAIRMAN. Sure.

Mr. PHILLIPS. I will submit these for the record. I submitted leads, based on newspaper articles, to the Appropriations Committee, to Senator Weicker, to Senator Rudman, and others, and requested that some effort be made to inquire of the Corporation about the validity of the implications of those articles. There has been no action taken on those requests by my part. Several years ago, I asked——

The CHAIRMAN. Let me interrupt you at that point. Submit those to us as well and let us see if we can——

Mr. PHILLIPS. I will resubmit them to you, sir.

The CHAIRMAN [continuing]. I personally believe that some of the issues you have raised here are very serious. In fact, all of them are. I agree with you, we have an obligation to oversee this Corporation, and frankly we should do a thorough job. To the extent that you can help us to do that job better, we would appreciate your cooperation.

Mr. PHILLIPS. Senator, I will try to help you ask the right questions and show you where you can get answers to those questions.

The CHAIRMAN. We will look forward to having any help you can give us. We would appreciate that.

Senator Eagleton.

Senator EAGLETON. Thank you, Mr. Chairman.

Mr. Phillips, your antipathy toward the Legal Services Corporation or its predecessor entity as a component part of the Office of Economic Opportunity is longstanding; is that fair to say?

Mr. PHILLIPS. My concerns about the legal services program go back many years, Senator.

Senator EAGLETON. Back in 1966, Congress passed a law making a legal services representation function part of the Office of Economic Opportunity. That would have been under the Johnson administration; is that correct?

Mr. PHILLIPS. I will rely on your memory, Senator.

Senator EAGLETON. Then President Nixon came in, in January 1969. Mr. Rumsfeld was the first Director of OEO under President Nixon, and you replaced Mr. Rumsfeld; is that not correct?

Mr. PHILLIPS. Well, you are leaving a couple of people out. Bert Harding was named to be Acting Director and served for a period of time before Mr. Rumsfeld was designated. Subsequent to Mr. Rumsfeld's designation, Frank Carlucci, to whom I served as special assistant, served. Then after Frank Carlucci, Phillip Sanchez was the Director. And after Phillip Sanchez, I was appointed to serve as Acting Director.

Senator EAGLETON. OK. For what period were you the Acting Director, roughly?

Mr. PHILLIPS. Well, there are legal scholars who would disagree. I would argue that I was Acting Director from January 31, 1973, until June 30, 1973.

Senator EAGLETON. About 6 months.

Mr. PHILLIPS. Five months.

Senator EAGLETON. What act, if any, as the Acting Director during that period of time, did you take to terminate the legal serv-

ices function then under your direction, because it was part of OEO back then?

Mr. PHILLIPS. I sought to use the fullest discretion available to me to change the priorities of the legal services program away from what I perceived to be public-interest-style advocacy in the direction of representation of the indigent. In 1971, at the request of the White House, I helped draft, together with Patrick Buchanan, Richard Nixon's veto of the Legal Services Corporation Act, the Mondale Act, of that year.

You are correct in saying that I was a critic of the legal services program from the time when I became familiar with it. I had been a supporter of the program prior to my arrival in the Government—not a well-informed supporter but a supporter nonetheless.

Senator EAGLETON. After your tenure there, who was your successor in June 1973?

Mr. PHILLIPS. My immediate successor was Alvin Arnett.

Senator EAGLETON. Did Mr. Arnett or his successor during the remaining Nixon or Ford years, up until mid-1974, do anything to terminate the activities of the legal services component of OEO?

Mr. PHILLIPS. Not to my knowledge, Senator.

Senator EAGLETON. Then in mid-1974, Congress passed a law setting up the Legal Services Corporation, and as you pointed out in your testimony, that bill was signed by President Nixon shortly before he left office.

Mr. PHILLIPS. I believe it was the last piece of legislation he signed.

Senator EAGLETON. From the time you left Government back then, you have served as a pamphleteer, and as a radio broadcast commentator, and an editorialist, and so on in various first amendment forensic capacities, have you not?

Mr. PHILLIPS. I have expressed my views in the private sector.

Senator EAGLETON. Frequently, I hear your views on WTOP Radio.

Mr. PHILLIPS. I think you may be confusing me with Kevin Phillips, but there was a period of time when I subbed for Pat Buchanan on WRC.

Senator EAGLETON. That is right. It was WRC. You almost caused me to have an accident one night.

Mr. PHILLIPS. I apologize. [General laughter.]

Senator EAGLETON. I swore I would never listen to you again, in the interest of safe driving.

Now, I listened to your testimony carefully, and I listened to the exchange between you and Senator Hatch. You are very careful today to unload your broadsides against the Legal Services Corporation in the most generic of terms. Well phrased, articulate, hard-hitting, good pamphleteering in the noble tradition of pamphleteering, but you shy away from specific examples, except you did point out, in answer to a question from Senator Hatch I believe, something about a situation down in Orlando, Fla. But your prepared testimony is broad and sweeping, accusatory, denunciatory, but rather unspecific. And you refused Senator Hatch's request to come forward with the Howard Phillips' horror stories.

Why is that? You say that is our job. That is Hatch's job. That is the staff's job. You are interested in saving public money. You are

interested in Senator Hatch not having to go out and hire 10 investigators. If you have files replete with documented case-by-case failures of the Legal Services Corporation, why would you not in the interest of just saving the public money, if nothing else, give Senator Hatch those files?

Mr. PHILLIPS. Senator, I believe that the best way to save the public money is for the elected representatives of the people to carry out their oversight responsibilities.

Senator EAGLETON. That is a glib answer, Mr. Phillips.

Mr. PHILLIPS. Senator, let me finish and try to respond more fully to your question. There are many issues in which I am involved and in which my organization is involved. This is an issue which is tangential to some of the other priorities of our organization. We are supporting a 10-percent flat tax, we are supporting military aid for El Salvador, we are involved in legislation to limit tax-funded advocacy, and so on.

I have to be accountable to my members. And frankly, for the last year or two, we have not devoted a great deal of time to extensive research—which is in effect a cost to our private supporters in this area. What I have, I pick up from reading other publications and reading the publications of the National Lawyers Guild and of the Legal Services Corporation. I am aware, for example, of Texas Rural Legal Aid's involvement recently in trying to delay the special election of Congressman Phil Gramm in that new election situation in Texas. I am aware of other situations.

To the extent I can do so without failing to fulfill my obligations to those to whom I am responsible, I will try to be cooperative, Senator. But I have to tell you that over the last 2 years, I have had other priorities on my time.

Senator EAGLETON. Well, we are in the same boat. As members of this committee, we serve on other committees, and we have other issues that demand some of our attention. So our time is spread thinly.

Mr. PHILLIPS. Senator, you have the authority to require the Legal Services Corporation to be forthcoming with information. I do not have that authority, and information I have sought repeatedly has been denied. Beyond that, you have the authority to at least propose that the Freedom of Information Act be extended to cover those 325 or however many there are local grantees of the Corporation.

Senator EAGLETON. Well, I submit, Mr. Chairman, there may be another reason why Mr. Phillips is reluctant to get very specific. Tax supported advocacy, the phrase Mr. Phillips uses, is one of the favorite fundraising techniques that can get people all excited and send in \$10. There are other hot issues, and you send out the hot letter, and get a hot response if you have a hot list. Maybe El Salvador is one of those now. Tax-supported advocacy, to use Mr. Phillips' phrase, is one of them.

I submit that the reason he may not want to get very specific is that when he used to get specific, he used to be dead wrong. The St. Louis Post Dispatch, probably one of Mr. Phillips' most unfavorite papers—

Mr. PHILLIPS. I am sure it is one of your favorites.

Senator EAGLETON. And it is one of my favorites—wrote an article in 1981, a big, long article, with a lot of detail, with his picture: "Criticism of Poverty Law Program Laced With Inaccuracies." That is the headline. William Freivogel, St. Louis Post Dispatch.

The campaign to abolish the Federal program providing lawyers for poor people has been waged with several inaccurate, unsubstantiated, and misleading allegations, an inquiry by the Post Dispatch has found. The program's most active and outspoken opponent is Howard Phillips, Chairman of the Conservative Caucus * * *

Further on, about six paragraphs down, "The Post Dispatch sought documentation of about 20 allegations cited by Phillips. Documentation was found for two." That is a batting average of 100. Mark Belanger hit more than 100 when he was playing with the Orioles.

If my track record were such that when I made accusations and cited the *Orlando* case, the *Texas* case, and the this-or-that case, and then when a check was made on the facts, it came up short, I think I then would become an advocate of a different style.

Mr. PHILLIPS. Senator, may I respond?

Senator EAGLETON. Let me finish, Mr. Phillips. I waited for you to finish yours; let me finish mine.

So paint with a broad brush, attack with a huge meat ax, go in with a large bevy of dynamite, and just blast away generally at a program and hope something sticks. But shy away from anything specific because if you get too terribly specific, sometimes the facts do not back you up. I submit that is a viable possibility.

Mr. PHILLIPS. May I respond, Senator?

Senator EAGLETON. Sure.

The CHAIRMAN. Sure.

Mr. PHILLIPS. Senator, I would submit that even Members of the U.S. Senate find journalists to whom they are unprepared to speak. I remember a time when you were not returning Jack Anderson's calls because you had some questions about his accuracy. I would regard Mr. Freivogel as the Janet Cooke of the legal services community, and I would suggest that it is not my responsibility as a private citizen to help William Freivogel, who is an active supporter of the Legal Services Corporation, to write his stories for him. Simply because Mr. Freivogel was unable to put together information in support of those charges he selected to report is no basis for concluding that those charges are inaccurate.

Senator EAGLETON. I will say this, Mr. Chairman, and then I am finished.

The CHAIRMAN. I can see that the two of you really like each other. [General laughter.]

Mr. PHILLIPS. Senator, I have a personal high regard for Senator Eagleton. I respect his support for the prolife movement and his position on some other issues, but I respectfully disagree with him on this issue.

Senator EAGLETON. I have no animus toward Mr. Phillips, and I am a great believer in the first amendment. Thank God we both can practice it, here and elsewhere.

I will suggest this and then I am through. I am going to ask that the Freivogel article be printed at this point in the record.

The CHAIRMAN. Without objection, it will go into the record.

[Material supplied for the record follows:]

Criticism Of Poverty Law Program Laced With Inaccuracies

By William F. Vogel

Post-Dispatch Washington Bureau

The campaign to abolish the federal program providing lawyers for poor people has been waged with several inaccurate, unsubstantiated and misleading allegations, an inquiry by the Post-Dispatch has found.

The program's most active and outspoken opponent is Howard Phillips, chairman of the Conservative Caucus Inc.

In congressional testimony and newspaper advertisements, he has made unsupported claims of abuses in the program. Some have been repeated by the Reagan administration.

Some of the unsupported allegations turned up in an administration "working paper" circulated this summer on Capitol Hill. The working paper was an attempt to muster support for the administration's proposal to permit states to determine how much money goes into legal services.

Rep. Sam B. Hall Jr., D-Texas, a congressional critic of the program, repeated some of the same charges in a congressional document opposing financing of the Legal Services Corp., which runs the program.

Most of the allegations attempt to link the corporation with Communist groups or liberal causes. Phillips has maintained that the corporation is a captive of radical leftists.

For example, Phillips alleged that the corporation filed "litigation to

compel the New York City Transit Authority to hire former heroin addicts."

The allegation is repeated almost verbatim in the administration working paper and a report by Hall.

But the New York suit was not filed by the Legal Services Corp. It was filed by the New York Legal Action Center, a private organization with no affiliation with the government-financed program.

The administration report was written by Michael Morowitz, special counsel of the Office of Management and Budget. He agreed that some of the summaries of cases in the report appeared to be misleading or unsubstantiated. He said he had not checked them himself.

He maintained that did not alter the basic position of the paper: "A group of people have captured the program and run it in accordance with their bankrupt ideology."

A spokesman for Hall said he had not checked the allegations independently. The spokesman said Hall's main reason for opposing the corporation was its activities in Texas.

The Post-Dispatch has tried unsuccessfully over a period of several weeks to reach Phillips. Although he refused to be interviewed, the Post-Dispatch forwarded a series of questions to him asking the basis of some of his allegations.

Larry Wuldt, director of

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communications for the Conservative Caucus, responded to the inquiries. He sent newspaper and magazine clippings to support a few of the allegations.

After more than a month, he said he had not found the documentation for the other allegations, did not have time to search for it and broke off contact with the Post-Dispatch.

Thirty percent of the allegations are true," Woldt said.

Phillips has said legal services lawyers have opposed prayer in schools, filed suits challenging parents' authority to intercept mail addressed to their children and supported boycotts of stores that have not ratified the Equal Rights Amendment.

As for the evidence indicates that the prayers have not been involved in those activities.

He has said legal services lawyers have represented "pro-Castro groups and the Gray Panthers."

The Gray Panthers is an association of older people. It says its only connection with Cuba is that it once scheduled a trip to study how older people were treated there.

Woldt said it was unfair to write a story about the allegations. Phillips could not document when he was able to prove 90 percent of what he said about the corporation.

Woldt said the Post-Dispatch was biased in favor of the corporation. "Mr. Phillips is the right as well as talking to the public relations department of Legal Services Corporation," he said.

The Post-Dispatch sought documentation of about 20 allegations cited by Phillips. Documentation was found for two.

Legal Services lawyers have filed suits to obtain government paid medical benefits for persons seeking exchange operations. And the corporation has filed suits seeking government financing of abortion for poor women.

The corporation says that in these controversial cases, it was seeking to protect established legal rights for poor people. The courts agreed with the corporation on the sex change operations and ordered the government to pay medical benefits for them.

The corporation eventually lost the abortion case when the Supreme Court ruled that states could refuse to provide such medical benefits for poor women.

Tim Ayers, a spokesman for the corporation, said the controversial cases were only a small proportion of the corporation's actions.

Most of the suits, Phillips criticizes are class-action suits in which the corporation represents a group of poor people challenging a government policy. Ayers said less than 1 percent of legal services suits are class-action suits.

Most involve problems such as domestic violence and rape, sexual abuse.

Phillips has led the Conservative Caucus to the legal services program since the early 1970s, which is

tried to cut it back as then-President Richard M. Nixon's director of the Office of Economic Opportunity.

He renewed his campaign last year in a series of mailings, newspaper advertisements and appearances before congressional committees. Here are some of the major accusations:

In testimony March 24 before the House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice, Phillips said legal services lawyers were lobbying against congressional efforts to allow voluntary prayer in public schools.

He cited a quotation from Clearinghouse Review, a publication of the Legal Services Corp. that reports on legal developments relevant to the poor.

He relayed the quotation this way: "The most politically controversial access issue of the 96th Congress was the effort to remove by statute all federal court jurisdiction over school prayer issues. . . . If the forces seeking to eliminate school prayer jurisdiction succeed, they are likely to move on to other issues more directly affecting the poor, including abortion and school desegregation."

What Phillips left out of the quotation, where an ellipsis appeared in his testimony, was this phrase:

"While school prayer is not a legal services issue, the underlying question of Congress's authority to limit federal court jurisdiction over constitutional claims is."

Ayers, the legal services spokesman, says the Legal Services Corp. has never argued against school prayer.

In an advertisement June 16 in the Washington Post and in testimony to a Senate Appropriations subcommittee, Phillips accused legal services lawyers of helping "pro-Castro activist groups like the Gray Panthers."

The Gray Panthers is an organization of older people that argues in court and lobbies in Congress for the rights of the elderly. The Legal Services Corp. sometimes represents the group. None of the assistance has involved suits relating to Cuba.

The basis for Phillips' allegation is a trip the Gray Panthers planned to make to Cuba to study the life of older people there.

Woldt said an article in a Gray Panthers publication describing the trip showed that the group is pro-Castro. The article said "In Cuba, the word for 'retiree' is *jubilado*, literally 'jubilant.' Though Cuban jubilados often confront the loneliness and boredom forced on many of the aged here, their retirement is not mandatory and thus, many opt for a still productive lifestyle after the age of 65."

According to Steven Wayne, who with Maggie Kuhn is organizing the trip, "Too many people have a distorted view of life in Cuba and it must be our duty to provide a different

perspective."

Ms. Kuhn, head of the group, denied it was pro-Castro. She said her group has consultative status at the United Nations. It was in that role that the group planned a trip to "see what Castro was doing and see the dynamics of age discrimination in the Castro regime," Ms. Kuhn said.

The group has traveled also to Micronesia, Kenya, Malaya and the People's Republic of China, she said.

An advertisement by the Conservative Caucus May 4 in the National Law Journal said "LSC-funded activists . . . support boycotts of states that have not ratified ERA."

Phillips cites a quotation from Clearinghouse Review that "the economic boycott against non-ratifying states has been vindicated in the context of the ERA as a tool for women's advocates."

The article he cites is about court decisions affecting women. The quoted material is at the beginning of a summary of the federal court decisions rejecting Missouri Attorney General John D. Ashcroft's challenge to the boycott in Missouri.

The Legal Services Corp. decided not to boycott states that have refused to ratify the Equal Rights Amendment, Ayers said. Recently, legal services groups have met in Florida and Missouri, states that have refused to ratify the amendment.

Nor was the corporation involved in the federal court case that upheld the right of women's groups to boycott states that have refused to ratify the amendment.

In a fund-raising letter on Sept. 8, 1980, Phillips wrote that all legal services projects "are committed to the implementation of a radical social and political agenda which has included . . . lawsuits by young children to challenge the authority of their parents on matters like access to personal mail, choice of pets, and the like."

Phillips made much the same charge in an article in Human Events on Jan. 18, 1974. There he cited a suit by the San Francisco Neighborhood Legal Assistance Foundation on behalf of a 17-year-old girl whose father intercepted her mail.

The San Francisco Neighborhood

Legal Assistance Foundation responded at the time that the allegation was false, that no such suit existed and that legal services attorneys were not representing such a girl.

Woldt was unable to present evidence of suits challenging parental authority over mail and choice of school. He said he knew of a case in which the corporation represented a retarded child in a suit by the child's father seeking control over her affairs. He declined to provide details.

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Other allegations by Phillips and other critics, while not unsubstantiated, omit some details.

On March 24 in House testimony, Phillips criticized the Legal Aid Society of Columbus, Ohio, for representing penitentiary inmates in "extensive litigation . . . on such matters as 'inmate idleness' and inadequate 'recreational services'."

The society sued in 1978, challenging conditions at the 140-year-old state penitentiary in Columbus, where prisoners were allowed out of their cells only for meals and two hours of recreation a week.

Inmates were housed in dimly lighted, unheated cells without hot water. During the winter, temperatures in the cell blocks slipped into the 30s. The state had closed the prison in the early 1970s but reopened it when a new penitentiary at Lucasville became overcrowded.

The Justice Department joined the suit against the Columbus facility. In 1979, the state agreed to close it in 1983 and upgrade conditions until then.

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In Senate testimony April 22 and in a Conservative Caucus advertisement in the Washington Post on June 16, Phillips alleged that Legal Services employees participated in raising funds for the anti-American Castro terrorists and guerrillas in El Salvador.

That allegation is based on an article on Jan. 29, 1981, in The Daily World, a left-wing newspaper. It describes a meeting of union leaders in New York who agreed to participate in a campaign to sell bonds to pay for humanitarian aid to El Salvador. The article says that members of a union representing legal services lawyers in New York attended.

The money raised by sale of the bonds was to be sent to a Catholic archbishop in Mexico. The bonds indicated the money was "for a free El Salvador."

Woldt said he had no other evidence that money was being used to finance terrorists and guerrillas in El Salvador. Spokesmen for the legal services union in New York denied any involvement in raising funds for terrorists. A spokesman said the union did not send a representative to the meeting; it is not solicitor bonds.

The legal services foundation working



Howard J. Phillips
Alleges Communist ties

paper also left out key facts in criticizing corporation cases. For example, the report stated:

"California Rural Legal Assistance sued Madera County to overturn regulations requiring welfare recipients to accept available agricultural work on penalty of jeopardizing their welfare eligibility."

It did not explain that the lawsuit was brought on behalf of 19 families whose welfare benefits had been cut off because they had refused to send their children into the fields to harvest grapes.

One of the clients was Jesus Segovia, his wife and four daughters. Segovia was blind, his wife disabled and one of the daughters mentally retarded. The California Supreme Court sided with the facts this way:

"Social worker Schleich (nurse and employee of the Welfare Department) allegedly threatened Mrs. Segovia with termination unless she and her four daughters reported to pick grapes. . . . The family feared termination and decided to work. However, Mrs. Segovia has a disabled arm, and her 15-year-old daughter, Amanda, is mentally retarded and cannot work without close personal supervision. These two therefore stayed home."

"Three other Segovia daughters, aged 10, 11, and 17, went to the field accompanied by their supervisor and recipient of Aid to the Blind. Work was for their safety. In the field they

was allegedly no toilet, a place to sit, or one's hands, and no first aid kit."

"That same afternoon, Schleich allegedly came to the house and told Mrs. Segovia that her disabled arm was insufficient excuse for not working, and that she would be terminated unless she worked. On Thursday and Friday, therefore, all but the mentally retarded child went to the fields."

"On Thursday, Sept. 21, Schleich allegedly phoned the home, found Amanda there, and so verbally assaulted her that she was still emotionally distraught when the family returned that evening."

"The state terminated the benefits."

Benefits of another to their were ended after she refused to send her children, 11 and 16, back to the fields after they became sick from working in the sun.

The California Supreme Court ruled that the county had no right to cut off the benefits.

Ronald Reagan, then governor of California, criticized that suit as "frivolous and harassing" in a long-running battle with the legal services program. A committee appointed by the Nixon administration to investigate Reagan's allegations concluded that it was neither frivolous nor harassing.

Horowitz acknowledged that the details of the case are a different matter. But he questioned whether the Legal Services organization had tried hard enough to settle the issues before filing suit.

Senator EAGLETON. The record, of course, customarily will remain open for several days. If during that period of time there is anything Mr. Phillips wishes to add in connection with this article or any other facet of it, he has the full privilege to do so, and it will be printed in full in the record.

The CHAIRMAN. Without objection, we certainly will allow Mr. Phillips that opportunity. I will keep the record open for 2 weeks, and if you need more time we will be happy to see what we can do to get more time.

I will say this, that we have done some investigation. We certainly have not done as much as you probably would like us to do. But I can say this, that there have been some things that you pointed out and some that I can point out that really concern me. When I came here to the U.S. Congress I supported the Legal Services Corporation. Because of some of these things that we have found, especially recently, questions have arisen in my mind. Let me say that I still support the concept. I do not think any poor person should do without legal representation. But I question, like you, whether the present program is the right way to do it.

I also know, as a former practicing attorney myself, that attorneys have a tendency to be activists. I would like to see this organization be less activistic and more legalistic in its approach to help the poor.

I will just give you a couple of illustrations that I had in my opening remarks, which I put in the form of questions. Are the poor people in Texas really interested in preventing the special election in the Sixth Congressional District, or was the staff of the Texas Rural Legal Aid interested in preventing Phil Gramm from being elected as a Republican to the House of Representatives? That question needs to be raised. It is just not right for us to be funding political activism to help one party or the other. I do not want them helping the Republicans; I do not want them helping the Democrats. I think they ought to be helping the poor.

Mr. PHILLIPS. Senator, may I interject something?

The CHAIRMAN. Sure.

Mr. PHILLIPS. And perhaps Senator Eagleton would have an interest in this. I cannot tell you with precision, Senator, which of the various 15 lobbyists and 100 groups that belong to the Coalition on Block Grants and Human Needs has received funding, directly or indirectly, through the Legal Services Corporation. I do know that some of them have. I know that specifically, to mention one today, the Food Research and Action Center, through an indirect grant from the Western Center on Law and Poverty, if not through other sources, has received money involved in this.

There is an article in the May 9 edition of Business Week which credits this coalition with having pushed through an additional x billions of dollars in social spending in response to their efforts.

Here is another publication in which you might be interested. This is a book called "Lobbying on a Shoestring, How to Win in Massachusetts and Other Places." It has endorsements from Barney Frank, from ACORN, from AFCSME, and if you read the inside page, the acknowledgments page, it says, among other things, "Thanks to the Legal Services Corporation who provided the funds for this book and has given us permission to use it." I

have a lot of these things to look at, and I would be happy to submit these items to the committee for the record so that they can examine them.

[Material supplied for the record follows:]



The Conservative Caucus, Inc.

National Headquarters 422 Maple Avenue East Vienna, Virginia 22180 (703) 893-1550

Project Office 47 West Street, Boston, Massachusetts 02111 (617) 426-7188

Administrative Office 7777 Leesburg Pike, Falls Church, Virginia 22043 (703) 893-1550

May 1, 1981

Hon. Lowell P. Weicker, Jr.
Chairman
Appropriations Subcommittee on State,
Commerce, Justice and Judiciary
U.S. Senate
146 A The Capitol
Washington, D.C. 20510

Dear Senator Weicker:

On April 22, 1981, Dan Bradley, President of the Legal Services Corporation, in answer to a question concerning class action suits engaged in by Corporation-funded grantees, stated that less than two-tenths of one percent of all LSC cases were class actions. This "statistic" was not challenged.

As part of your oversight responsibilities, I think it is important for you to determine what percentage of LSC attorney time and what portion of the budget of each of the more than 320 LSC grantees is spent on class action suits?

As a private citizen, I do not have the resources to provide an answer to that question. The Subcommittee, however, can and should obtain this information for each grantee before any further funds are appropriated for the Corporation, provided there is an authorization in law against which the Committee may appropriate funds.

Based on the three following examples, I believe that a true accounting of time and money spent on class action suits by Corporation grantees is substantially more than suggested by Mr. Bradley.

1. The Orlando (Florida) Sentinel Star of January 27, 1981 reports that the Greater Orlando Area Legal Services

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Director
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Assistant Director

Media Director/Special Projects
Larry A. Wolcott

Publications
Senate Issues Yearbook
Senate Report
Grass Roots
Members Report

(GOALS), which received \$527,885 last year, had "only two class action suits out of more than 4000 cases. But the financial and manpower costs of those two class action suits ...are far greater than those of the individual cases." (clipping attached).

Apparently more than half of the \$527,885 grant is being used for just two class actions.

2. In testimony in April, 1981, before the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice, the county attorney of Orange County, New York, who defended the county against a class action suit brought by the Mid-Hudson Legal Services, Inc. (\$581,929 in LSC funds last year) stated that Mid-Hudson spent at least 215 man days of time on that suit. This is the equivalent of more than a year of time of one person .

The Chairman of the Board of Mid-Hudson testified at the same hearing that Mid-Hudson employs only 10 lawyers. Obviously a large amount of time was spent on this one case. No one will know how many poor people with individual problems could not be assisted because of this one class action.

3. And now comes the granddaddy of all the Legal Services Corporation-funded class actions. According to Adrian Lee, Columnist of the Philadelphia Bulletin, in two columns which appeared on March 15, and 16, 1981 (attached), the Community Legal Services, Inc. (CLS of Philadelphia) (\$2,277,972 in LSC funds last year) is claiming \$4.5 million in legal fees for what in Philadelphia is popularly known as the Whitman Park suit involving 120 units of low income housing.

My organization has been informed by an attorney who was involved in the litigation of this case that this Whitman Park case was a class action.

The claim for \$4.5 million in fees in this case indicates that at their current annual rate of funding, CLS spent 100% of their resources on this one suit for the equivalent of almost two years!

Stated another way: If the claim for \$4-5 million were costed out at the rate of \$100 per hour, it would mean that CLS spent 45,000 hours on this one case. This would be 45,000 hours of assistance that could have been spent solving individual legal problems of poor people. Since Legal Services attorneys are not paid at the rate of \$100 per hour, it is possible that many more than 45,000 hours were spent on this case and away from individuals' problems.

Based on these three examples, I believe the Subcommittee ought to obtain from the LSC, and fully review, an accounting of the amount of time and money expended by each LSC grantee on class actions. This information should be made part of the hearing record, so that everyone may review it.

Any action to appropriate funds without this information will be a signal that the Committee does not really care how LSC and its grantees use the taxpayer's money.

I respectfully request that this letter and attachments be made part of the hearing record.

Sincerely,



Robert Phillips
National Director
The Conservative Caucus, Inc.



The Conservative Caucus, Inc.

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April 22, 1981

Hon. Warren Rudman
United States Senator
3313 Dirksen Building
Washington, D. C. 20510

Dear Warren:

Thank you once again for giving me the opportunity to testify concerning Legal Services before your subcommittee.

I particularly appreciate your willingness and that of Senator Weicker to enter into the record the transcript of the Legislative Advocacy seminar held in San Juan, Puerto Rico just after the election.

I also appreciate your agreeing to include for the record the freedom of information request filed by The Conservative Caucus Research, Analysis, & Education Foundation, together with the reply received from the Legal Services Corporation. Your intention to directly pursue the same information encourages me greatly.

It will be a pleasure for me to take a fair look at the information which you develop, and work with you in trying to come to a responsible solution to this very significant public policy debate.

With your indulgence, I will, from time to time, send you information which comes to my attention concerning the Legal Services program. For starters, I hope you will take a look at the enclosed correspondence concerning the relationship between the Legal Services Corporation and the pro-PLG National Lawyers Guild.

As you will note, the then leadership of the Legal Services Corporation, personified by Thomas Ehrlich, and Senator Harrison Williams of New Jersey, who chaired the authorizing committee, were singularly unresponsive to the questions which I raised.

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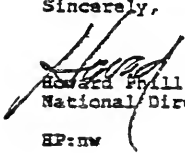
Publications
Senate Issues Yearbook
Senate Report
Glass Report
Members Report

Perhaps Senator Weicker and you will have greater success on this score.

Please call me whenever I may be of assistance.

With personal best wishes, I am

Sincerely,



Howard Phillips
National Director

HP:nw



The Conservative Caucus, Inc.

National Headquarters
1777 Leesburg Pike
Falls Church, Virginia 22043
(703) 893-6371

September 29, 1977

Hon. Harrison A. Williams
Chairman, Committee on Human Resources
United States Senate
352 Russell Building
Washington, D.C. 20510

Dear Senator Williams:

It has come to my attention that the National Lawyers Guild voted at a 1975 National Executive Board meeting to "provide legal support and resources" in aid to the cause of the Palestine Liberation Organization.

On August 1, 1977, a ten-member delegation of the National Lawyers Guild, which had spent three weeks in the Middle East, held a press conference charging that Israel practiced "institutional racism," routine torture, and "political repression enforced by military courts" against Arabs living in Israel and the West Bank. Two weeks later, the terrorist Palestine Liberation Organization sent one of its U.N. representatives to the National Lawyers Guild national convention in Seattle where the following resolution was submitted by one Jeff Goldstein of Denver:

"WHEREAS, the Palestinian people were driven from their homeland by the Zionist Regime of Israel and the forces of imperialism; and

WHEREAS, Zionism is a racist ideology used by the Israeli ruling class and government and imperialism to oppress the masses of Palestinian and non-Palestinian peoples, to divide them and cover up the real enemy of the people of the Middle East; and

WHEREAS, the Palestinian Liberation Organization (PLO) is the legitimate and recognized representative of the Palestinian people; and

WHEREAS, the National Lawyers Guild has previously gone on record in support of the struggles of the people of the Third World against imperialism and its agents.

NOW THEREFORE BE IT RESOLVED:

1. That the National Lawyers Guild hereby goes on record in support of the struggle of the Palestinian people to recover their homeland and national rights; opposes Zionism as a reactionary ideology promoted by the Israeli Ruling Class and government and imperialism; recognizes the PLO as the legitimate representative of the Palestinian people.
2. That the National Lawyers Guild conduct educational forums in its various chapters on the struggle of the Palestinian people.
3. That the International Committee arrange for a representative of the Palestinian Liberation Organization to address the membership of the Guild at a National Meeting in the near future concerning the struggle of the Palestinian people.
4. That the National Lawyers Guild arrange and sponsor a nationwide speaking tour by a representative of the PLO.
5. That the National Lawyers Guild send a letter of solidarity to the PLO embodying the substance of this resolution."

The Federal Legal Services program operates through 315 privately-controlled non-profit organizations, which are recipients of funds from the Corporation.

I am deeply concerned that some employees of the Legal Services Corporation and officials of individual legal services program grantees, are active in the National Lawyers Guild, and that the resources of the Legal Services program which are provided by the American taxpayer, are being used to further the objectives of the National Lawyers Guild, which is so completely out of step with the principles on which our country was founded, and with the thinking of the American people.

Indeed, it is a fact that some grantees of the Legal Services Corporation, which has been under the jurisdiction of your committee, assign seats on their boards, to be filled at the discretion of the National Lawyers Guild.

I am calling upon you to initiate public hearings to investigate the connection between the Federal Legal Services program and the radical National Lawyers Guild.

I will appreciate your prompt attention to this inquiry.

With best wishes, I am

Sincerely,


 Howard Phillips

HP:mm

CC: Members of the United States Senate



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January 4, 1983

MEMORANDUM FROM: HOWARD PHILLIPS ^R

Enclosed is a xerox of the book, Lobbying on a Shoestring, by Judith C. Meredith and Linda Myer. Please note that this book was published by the Federally funded Massachusetts Poverty Law Center, 2 Park Square, Boston, Massachusetts 02116, and that it is dedicated, "To CBHN (Coalition for Basic Human Needs), LIFE (Living is For the Elderly), MTO (Massachusetts Tenants' Organization), ACORN (Association of Community Organizations for Reform Now) MUPHT (Mass. Union of Public Housing Tenants) -- and all the other groups who represent the needs and interests of Legal Services clients."

The acknowledgements page says:

"This book grew out of an earlier work -- A Manual on Massachusetts Legislative Advocacy for Legal Services Programs Clients and Staff by Terrence McLarney, et al. This was published in 1979 as a handbook for participants in legislative advocacy training conferences sponsored jointly by Massachusetts Law Reform Institute and Greater Boston Legal Services. While the original book focused specifically on Massachusetts and on the lobbying efforts of particular interest to Legal Services clients and their lawyers, the current version attempts to broaden this base into lobbying in any state and for any group of interested citizens.

"Although this book has metamorphosed into a new creature, we'd like to thank all those who provided the raw material in the earlier version: Terrence J. McLarney, Rochelle Lefkowitz, Robert A. Schaeffer, Kathleen O'Grady, Robert James, Arlene Sen, Mary Kay Leonard, Maureen O. Holland, Frankie Lieberman, Robert Ritchie, Katherine Currier, Judy Marcoux, Claunett Valliere, Marcia Herman, and Janice Smith. Also, thanks to the Legal Services Corporation who provided the funds for this book and has given us permission to use it."

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Publications

Senate Testimony, 1980
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Annual Report
Conservative Manifesto

Endorsements for the book, listed on the back page, include quotes from officials of ACORN, AFSCME, the Massachusetts Public Interest Research Group, as well as from liberal Democratic Congressman Barney Frank.

Why is it not a matter of public controversy that public funds are being used in this manner?

HP:cj

Enclosure

(NOTE: In the interest of economy, the publications submitted to the Committee by Mr. Phillips entitled, "Lobbying on a Shoestring" and "Just Us," were retained in the files of the Committee where the material may be researched, upon request.)

The CHAIRMAN. That will be fine. I might also add that I asked this question: Is one of the critical legal problems benefiting the poor today whether State governments should be financing sex change operations? Suits pursuing this objective were brought by a local legal service organization in Montana in 1979, in Iowa in 1980, and in Connecticut in 1981.

Are the poor best served by a Legal Services Corporation that would settle a case if the employer stipulates that the Texas right-to-work law is unconstitutional? In a current case, the employer has been warned that if it fails to agree to these conditions, Legal Services attorneys will seek an additional \$125,000 in damages from the employer. What is a Legal Services lawyer trying to assert his will with regard to right-to-work laws.

Are the poor best served by a Legal Services Corporation that is attempting to block the State of Florida from requiring that students pass a functional literacy test before they can graduate from high school? The Corporation's lawyers are concerned with the stigma that would attach to students who fail such a test. It kind of makes you wonder if President Gardner and the others on this Presidential Commission on Education, putting out this book "A Nation At Risk," are not right.

Mr. PHILLIPS. Senator, I would argue that there are questions of judgment involved in every legal proceeding and choice of proceeding. I would argue that there is no regulation you can write that will prevent circumstances like that occurring. I would suggest that the best way, if you are committed to spending money for civil representation for the indigent, is to write a law which permits the indigent to choose their own lawyers and not to have a system of full-time staff attorneys who are in a position of functioning as public interest lawyers setting their own priorities.

The CHAIRMAN. That is an interesting comment. Now let me ask you this, in the presence of my friend, Tom Eagleton. If you had a system like that, would you be willing to provide it with more funds? You see, I personally do not believe \$241 million will do the job. Would you be willing to fund it more if you had a system similar to the ones you've described?

Mr. PHILLIPS. Senator, my own view, which I recognize is not a majority view here, is that this is not an appropriate function of the Federal Government in any event. However, there are levels of disagreement. I disagree with other things the Federal Government does. I would argue that the program would be a significantly better program and not a priority concern of its critics, not if you change the funding level so much as if you change the way in which services are delivered.

I am persuaded by what Bill Harvey, the former Chairman of the Legal Services Corporation Board had to say, when he made the point that it is much more expensive—thank you, Senator, for hearing me out. According to Chairman Harvey, it would be much more effective for the poor if, instead of subsidizing a staff attorney system, where you have to buy a library, where you have to buy all the political support, where you are paying dues to the United Auto Workers, where you are going to the meetings of the National Lawyers Guild, where you are going down to San Juan, P.R., if instead of doing that, you simply permitted attorneys in the

private bar to provide representation up to a ceiling of \$30 an hour, and if you prorated the money out among the States on the basis of the indigent population.

Even more than class actions, I am concerned about group representation. Even more than group representation, I am concerned about the organization of grassroots coalitions.

The CHAIRMAN. There are Senators who greatly disagree with you on this committee, but I think some of your ideas are very good.

Mr. PHILLIPS. Senator, I know you have to move on. One last word. I hope you will take the time to get the facts that are needed to legislate. When you determine that the time has come to move to legislating, I have taken the liberty of preparing some draft pieces of legislation that would provide a different approach to legal services, at the same funding level perhaps or at a different funding level—whatever the committee determines—

The CHAIRMAN. We would be delighted to look at them.

Mr. PHILLIPS [continuing]. But which I think would build in checks and balances which, far better than any regulatory system, would restrict the abuses in this program.

The CHAIRMAN. We will be delighted to look at those. If you will stay a few more minutes, we may have one or two more questions.

Let us turn to you, Diann. We appreciate your taking the time to be here today. In your prepared testimony, you claim that Neighborhood Legal Services in Pittsburgh is currently engaged in several class actions which are costing the organization to waste needed funds. Could you be a little more specific on that?

Ms. JENKINS. Yes; Senator, I can. Neighborhood Legal Services has been representing ACORN in the class action suit against HUD. That case has just been completed in the Federal court. So far, we do not know of any suit for reimbursement of fees, but I am sure that will be forthcoming. HUD has been in and out, up and down. The documentation covering that suit is in the package of information which I have supplied to all members of the committee. In there, you will also find that the HUD attorney has also accused Legal Services of conspiracy in what they were doing and the way they were handling the suit.

Additionally, we have the ACORN suit against the port authority. We have *Lawson v. Coon*, which is the suit over the jail. There was another case several years ago—I do not know for certain that it was a class action, but I feel it very likely was because of the surroundings. It was a suit against the warden at the penitentiary, requiring transportation for gynecological exams for one of the female inmates. We have another suit, again a class action, just filed this past winter—winter a year ago—against a juvenile court judge. That one is a good one because the judge involved happens to be one who stepped up the political ladder by hanging on Legal Services' name in other class action litigation.

The CHAIRMAN. I want to thank you again for coming to testify, Ms. Jenkins. I understand that your lawsuit with Legal Services has not been a very pleasant experience for you, and of course it has cost you much of your own time and money. I assume that no organization is funding you in your effort, but that basically it is

your own resources pitted against those of the Federal Government through Legal Services; is that correct?

Ms. JENKINS. That is correct, Senator. I have to tell you that even all the paperwork that is here right now is personal cost. I get nothing from the Federal Government. I work for a living. I have to do this on my own time, and I do not get paid to do it. I resent my tax money and the tax money of my friends and my neighbors and the people all across this country who have to pay to sue themselves and at the same time go into the same pocket and pay to defend themselves. It has to stop somewhere. We cannot afford it anymore.

The CHAIRMAN. Senator Eagleton, do you have any questions?

Senator EAGLETON. No, Mr. Chairman.

The CHAIRMAN. Mr. Phillips, we are very happy to have the comments you made today. We will be happy to look at the legislative suggestions that you have, and of course, we will continue to see if we can oversee the Legal Services Corporation in a manner that is beneficial to all citizens in this country. It is very difficult to do because we only have so many resources ourselves.

Mr. PHILLIPS. I commend you for your interest in considering oversight, and I would encourage you, as we approach the 10th anniversary of the Corporation, to take a look at what has been done. If you are committed to continuing the program, to seeing how you can remove the concerns which many people in the private sector have.

The CHAIRMAN. Thank you very much.

Ms. JENKINS. Senator Hatch, may I interrupt just one moment, please?

The CHAIRMAN. Yes.

Ms. JENKINS. There is one final note that I think all of you and your staff should be aware of—unfortunately there are only two Senators in the room right now. In September 1981, Neighborhood Legal Services in Pittsburgh formed a union, the Iron City Legal Assistance Workers Union. The union representatives have been actively involved in the formation of the western Pennsylvania chapter of the Fair Budget Coalition, which is an advocacy and political activist group. They are involved very heavily in voter registration drives and in determining voting blocks in order to put their own candidates in public office. They work with other groups to organize demonstrations throughout the western Pennsylvania area.

I am not saying that Neighborhood Legal Services is the impetus of the organization, but they are definitely a part of the makeup and they are a part of the advisory boards of these activist organizations. There are funds contributed to make up this Fair Budget Coalition in order to be part of the membership. Something has to be done to check on these activities, sir. This is their blue book. I have to tell you that I sat in an organizational meeting, and they did not know who I was. When I walked out of that meeting, I was shaking. I felt like Herbert Philbrick in the 1950's in "I Led Three Lives." Senator, this is dangerous, and someone has to listen to what is going on here.

I have sent this information to all levels of government. I sent it to the Legal Services Corporation and I could not tell you how

many different committees. No one pays attention. They think these people sitting out there are dumb and stupid. They are not. These people are very smart, and something has to be done to stop this activity.

The CHAIRMAN. Would you be kind enough to leave that with the committee for part of our record?

Ms. JENKINS. I certainly will.

The CHAIRMAN. We appreciate your taking the time, as a citizen, to be in front of this committee today.

[Material supplied for the record follows:]



The
Conservative
Caucus, Inc.



National Headquarters 450 Maple Avenue East, Vienna, Virginia 22180 (703) 893-1550

May 9, 1983

Senator Orrin Hatch
Chairman, Senate Labor and Human
Resources Committee
428 Dirksen Building
Washington, D.C. 20510

Dear Chairman Hatch:

I am glad to know of your determination not to reauthorize appropriations for the Legal Services Corporation until your committee has fully reviewed expenditures during the first nine years of the Corporation's history.

The American people have a right to know how nearly two billion dollars has been used before the authorization of additional millions of their tax dollars for this program goes forward.

As I indicated in my testimony, this is a particularly appropriate time for you to initiate a genuine oversight of the Corporation, given the fact that, for the foreseeable future, ongoing funding is being provided through a continuing resolution.

Since the Corporation has survived since October 1980 without an authorization, there is no valid reason why an authorization must now be railroaded through in the absence of an honest oversight process.

No private organization has the authority to require the Legal Services Corporation to produce factual information about the manner in which tax funds assigned to it have been spent.

The 325 grantees of the Legal Services Corporation are not covered by the Freedom of Information Act and the personnel at Corporation headquarters have not been particularly forthcoming in making significant facts and documents available.

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and Publications

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Senate Issues Yearbook
Senate Report
Grass Roots
Member's Report
Annual Report
Conservative Manifesto

To cite just one example of the "coverup" which has been implemented, I am enclosing a letter, dated December 4, 1981, in which one J. Kenneth Smith, Director of Regional Operations and Support Services in the Office of Program Support of the Corporation, contacted a beneficiary of Corporation support, stating

"It would be extremely helpful to us if you would rework your grantee reporting form and delete the references to voter-education, legislative and political process. Perhaps you could rephrase the language to say something to the effect that the project focused on citizenship and advocacy."

I am enclosing some other materials for you, such as

(a) the book Lobbying on a Shoestring, which was produced with funding from the Legal Services Corporation,

(b) the Information Directory on National Support Projects, published in October 1981 by the Research Institute on Legal Assistance of the Legal Services Corporation,

(c) School Discipline and Student Rights: An Advocate's Manual, published by the Center for Law and Education, a Legal Services grantee,

(d) In Defense of the Undocumented, a publication of the National Immigration Project of the National Lawyers Guild, Inc., which involved the participation of Peter Schey, who has headed the Legal Services' funded National Center for Immigrants' Rights,

(e) The Health Advocate, a newsletter of the National Health Law Program, pointing out pro-abortion activities by the Legal Services back-up center, and, most revealing,

(f) Just Us, "A guide to community building allies and their resources", which cites in specific the involvement of numerous Legal Services funded projects in explicitly political activities.

(Editor's Note: In the interest of economy, items (a), (b), (d), and (f) referred to above, were retained in the files of the Committee due to their voluminous content.)

Having supplied this documentation of heavily politicized activities carried out under the aegis of the Legal Services Corporation, let me reemphasize another point which I made in my testimony on May 4th.

So long as you retain the staff attorney system, there is no regulation which you can impose which will serve to prevent the Legal Services Corporation and its grantees from serving as "shock troops" for the implementation of ultra liberal political activities throughout the United States.

As has been proven over the years, so long as you place full-time, salaried people in the field with a mandate for law reform, group representation and organization, "community education", economic development, as well as client representation, you will continue to see what can be seen today if Congress will only bother to look: grass roots organizing, elaborate strategies for influencing public opinion, the formation of political coalitions, involvement in a wide range of political issues, both foreign and domestic, direct lobbying, and the comprehensive manipulation of administrative, judicial, and legislative decision-making processes.

I personally do not believe it is constitutionally appropriate for the Federal government to spend money to buy civil representation for any class of citizens.

If, however, you or the members of your committee are committed to the continuing provision of funds for the purpose of subsidizing civil legal representation, and if there is a genuine desire to depoliticize the manner in which such funds are used, you may wish to give consideration to the two draft pieces of legislation which accompany this letter.

One bill incorporates the concept of a Federally subsidized legal referral system in which eligible indigents could choose attorneys in private practice to represent them.

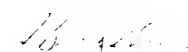
The other bill proposes tax credits for private attorneys who represent the indigent.

In any event, I appreciate your consideration of these points and hope you will have the fortitude to persevere in your stated objective of documenting, exposing, and preventing a recurrence of the abuses which have

occurred, prior to any further authorization.

With personal best wishes, I am

Sincerely,


Howard Phillips
National Director

HP:jbr

Enclosures

P.S. Some questions which I believe you ought to require of the Legal Services Corporation before even beginning to consider reauthorization accompany this letter.

To carry out its oversight responsibilities, the Labor and Human Resources Committee should require the following information with respect to each organization, individual, or other entity which has received funding from the Legal Services Corporation during the past two years:

1. The articles and by-laws for each such entity.
2. A list of all local, state, and Federal agencies from which each recipient has received or sought funds, the amounts of such funds, as well as the specific purposes to which such funds actually received have been applied.
3. A listing of all personnel who are compensated from sources other than the grant assigned by the Legal Services Corporation, with full details regarding the other activities on which they are working.
4. A copy of all audits over the past three Fiscal Years relating to the organizations' activities.
5. The names and resumes, including facts about present and past employment and organizational affiliations, and addresses of the individuals who make up the Boards of Directors and staffs of each such entity.
6. Amounts of compensation for each employee of a recipient entity.
7. Total amounts of legal fee awards received during the past two years.
8. Total number of hours assigned by each entity in connection with class action suits, test case litigation, or law reform activities.
9. Copies of all editions of all publications produced by each recipient entity.
10. Copies of all available news clippings on file concerning the activities of each recipient entity.
11. Copies of all program reports, including evaluation and inspection reports, concerning each recipient entity.
12. Copies of all Federal, state, and local lobbying registrations of employees, board members, and recipient entities.
13. A list of all law, reform, economic development, policy advocacy, and community education activities of each recipient entity, together with publications and reports concerning such activities.

14. A list of all associations and organizations with which recipient organization has had dealings during the past two years, particularly noting any and all groups to which the recipient or its employees, using LSC funds, pays dues or with which it is affiliated.

15. Documentation of all meetings and conferences attended by recipient personnel and board members acting in behalf of the recipient entity.

16. Evaluation priorities with respect to each recipient entity.

17. Copies of any and all union agreements entered into by recipient entities.

18. Identities of all organizations in whose behalf each recipient entity has sought Federal funding.

19. All instances of funds received by a recipient entity being assigned to other organizations.

20. A list of each grantee and contractor of LSC with address and phone number, annotated with the amount and budget period of the latest grant or contract to the grantee, or contractor.

21. For each grantee and contractor, a listing of all subgrantees and subcontractors with address and phone number, with the amount and budget period of each subgrant or subcontract. (For example, North Carolina Legal Services has 15 subgrantees who in 1981 received a total of \$6.8 million with the grantee retaining about \$900,000). Please break out how much of each subgrantee received.

22. The names and addresses of (a) Executive (Project) Director and (b) each board member of each grantee and subgrantee.

23. The total income to each grantee and subgrantee during the last completed budget period by source of income: a) other Federal grants (list each separately with Federal agency identified), b) other state or local grants (list each separately (For example, in 1980-1981, Pennsylvania Legal Services, an umbrella organization of LSC grantees and others in Pennsylvania, received an appropriation from the state legislature of \$2,300,000. In 1981, HUD Community Development Block Grant funds were given to an LSC grantee in Toledo, Ohio. Orange County, California, gave \$360,000 Federal general revenue sharing funds to Orange County Legal Aid Society and LSC Grantees in Pennsylvania received funds from

Title XX of the Social Security Act.), c) rent or royalty income (list each property with address, if applicable), d) fee recovery for each grantee and subgrantee (list each separately), and e) interest and dividends (account for each separately). In 1982, in testimony before the House Appropriations Subcommittee, former President Bradley said he would supply the information about interest.

24. For each grantee and subgrantee, facts about each class action suit pending during the most recent completed budget period (1982) annotated with number of hours spent on each class action suit with a notation of what percentage that number of hours on each case represents of the total hours available to grantee or subgrantee.

25. For each grantee and subgrantee, the carryover balance, 1980 to 1981, 1981 to 1982, 1982 to 1983. (For example, from 1980 to 1981, Legal Services of Alabama carried over \$2,262,080; Georgia Legal Services carried over \$1,095,960; and Legal Services of North Carolina carried over \$1,122,788. East Carolina Legal Services subgrantee carried over \$58,478 out of a grant of \$411,024.)

26. For each grantee and subgrantee, a list with addresses of all real property owned, including property once owned but conveyed to another owner. For each property a) date of acquisition and initial cost, b) cost paid and source of funds for renovation or remodeling, and c) either sale price or current market value. (In testimony in 1982 before the House Appropriations Subcommittee, Former LSC President Bradley said he would provide information on real property to the Subcommittee. For example, in 1980, Legal Services of North Carolina owned seven separate properties, but one property was renovated with \$110,500 in program funds from East Carolina Legal Services.)

27. For each grantee and subgrantee, a list of all other property owned with an initial purchase price of \$5,000 or more. (Note that Legal Services Corporation's own guidelines restrict the disposition of any property of \$1,000 of value or more.)

28. For all grantees and subgrantees, lists of all suits filed against the grantee or the subgrantee with a one sentence description of the suit and the disposition of the current status of the suit. (For example, Legal Assistance of North Dakota was in 1981 Camden Legal Services was sued for unprofessional conduct. Suit is currently pending against Coastal Bend Legal Services on an employment matter concerning a former attorney for that grantee. In 1981, Legal Services Corporation of Iowa was sued concerning its lobbying

activities. Neighborhood Legal Services in Pittsburgh was sued by former clients in 1981 concerning that grantee's advancing fees to expert witnesses in violation of state law. That same grantee is now being sued by its own employees for lack of public meetings. In 1979, employees of Western New York Rural Legal Services, a subgrantee of Monroe County Legal Assistance Corporation, were arrested for trespass on a farmer's property while they were trying to sign up migrant workers as clients. The migrant workers did not want to be bothered by LSC lawyers. Although the employees of the LSC grantee were acquitted, the LSC grantee is suing the migrant workers, who are supposed to be the beneficiaries of the LSC program, and others, claiming the LSC lawyers rights were and are being violated. (In 1981, a Federal District Court found that Legal Assistance of North Dakota had engaged in barratry in connection with the case Ost vs. Collection Bureau, Inc.)

29. For all grantees and subgrantees, list of all amounts paid on behalf of the program or any of its employees for professional or union dues. List separately amounts paid to a) National Legal Aid and Defenders Association, b) Project Action Group, c) American Bar Association, d) union dues (provide name of union), e) C.O.D.E. or other political action group, and f) all others. (For example, NLADA, in a July 22, 1982, letter to then LSC President Caplan, said that for 1982, NLADA projected dues income from civil programs of \$330,000.)

30. For each grantee and subgrantee, facts about which union contracts are now in force and which positions each contract covers. The name of the union should be provided with each contract listed. Inclusive dates of each strike engaged in by unionized employees against Legal Services Corporation grantees and thereby their clients should be set forth.

31. The names of all organizations to which Reginald Heber Smith fellows, subsidized with funds of the Legal Services Corporation, have been assigned during the past two years and the activities in which they have been involved. Specific information should also be requested concerning networking activities, coalitions, legislative drafting, press releases, radio and television communications.

32. Details of all instances in which recipient entities are known to have violated prohibitions against involvement with illegal aliens, abortion, and homosexual activity.

98TH CONGRESS
1ST SESSION

To repeal the Legal Services Corporation Act
and to provide tax credits to those
rendering professional legal assistance
to eligible clients,
and for other purposes

A BILL

To repeal the Legal Services Corporation Act
and to provide tax credits to those
rendering professional legal assistance
to eligible clients,
and for other purposes

BE IT ENACTED
BY THE SENATE AND HOUSE OF REPRESENTATIVES
OF THE UNITED STATES OF AMERICA
IN CONGRESS ASSEMBLED,

SHORT TITLE

SECTION 1. This Act may be cited as the "Legal Assistance Tax
Credit Act of 1983."

REPEALER

SECTION 2. Subchapter X of Chapter 34 of Title 42 of the United
States Code, the Legal Services Corporation Act (§§ 42 U.S.C.
2996-29961) is repealed one year from the effective date of this
Act.

DECLARATION OF PURPOSE

SECTION 3. To encourage the provision of civil legal assistance

to eligible clients in this Nation by allowing tax credits to individual attorneys who provide such assistance without compensation.

SECTION 4. Subpart A of Part IV of Subchapter A of Chapter 1 of the Internal Revenue Code of 1954 is amended by adding the following new Section:

"§ 44 I. CREDIT FOR LEGAL ASSISTANCE TO INDIGENTS

(a) General Rule: There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to twenty-five (25) percent of the value of civil legal assistance provided by individual attorneys without compensation and without charge to eligible clients during that taxable year.

(b) Definitions: For the purpose of this section, the word:

(1) "attorney" means a person who is admitted to practice law and render legal advice in the jurisdiction where that person provides legal assistance and representation to eligible clients;

(2) "eligible client" means any individual person whose annualized income is at or below the poverty level as determined by criteria issued by the Office of Management and Budget; however, an individual shall not qualify as an

eligible client where his lack of income results from refusal or unwillingness, without good cause, to seek or accept employment;

(3) "legal assistance" means the provision of civil legal advice and representation to eligible clients;

(4) "value of civil legal assistance" means the normal hourly or flat rate fee and costs that an attorney would ordinarily charge, for the particular legal assistance rendered, to a client who is not an eligible client.

(c) Limitation on Credit:

(1) The tax credit allowed by subsection (a) for any taxable year shall not exceed the amount of tax imposed by this Chapter, reduced by all other credits allowable.

(2) The tax credit allowed by subsection (a) shall not be allowed for any of the following:

- (1) any political activity;
- (2) attempts to influence the opinion of the public or any segment thereof;
- (3) attempts to influence the issuance, amendment, or revocation of any executive order by any Federal, State or local agency or official;
- (4) attempts to influence the passage or defeat of any legislation by the Congress of the United

- States, or by any State or local legislative bodies;
- (5) attempts to influence or participate in ballot measures, initiatives, referenda or recall petitions;
 - (6) any legal assistance with respect to any criminal proceeding or in the case of a juvenile, proceedings which would be criminal if involving an adult;
 - (7) providing any assistance with respect to the initiation, formation or organization of any coalition, group, committee, association, corporation, federation, or similar entity; or
 - (8) providing legal assistance to any person who does not qualify as an eligible client."

APPROPRIATION

SECTION 5. Section 1010(a) of the Legal Services Corporation Act (42 U.S.C. 2996i(a)) is amended by inserting, immediately after the second sentence, the following new sentences:

"There is appropriated for the purposes of carrying out the activities of the Corporation for the fiscal year 1984 the sum of \$241,000,000. Said funds shall be utilized by the Corporation and recipients in such a manner as to provide

for the orderly transition to provision of legal assistance to eligible clients solely by attorneys providing such assistance as provided in § 26 U.S.C. 44 I. No new eligible clients may be represented by use of the funds hereby appropriated. The Corporation and recipients which employ or compensate attorneys who currently provide legal services to eligible clients, shall assure that, not later than one year after the effective date of this amendment, eligible clients are represented by attorneys:

- (1) who the eligible clients have agreed to have represent them; and,
- (2) who are qualified to provide legal assistance to the eligible clients as provided in § 26 U.S.C. 44 I."

RIGHT TO AMEND, ALTER OR REPEAL

SECTION 6. The right to alter, amend, or repeal this Act at any time is expressly reserved.

EFFECTIVE DATE

SECTION 7. This Act shall take effect upon the date signed by the President of the United States.

SEVERABILITY

SECTION 8. If any provision of this Act, or the application

thereof to any person, organization or circumstance, is held invalid, the provision to other persons, organizations or circumstances shall not be affected thereby.

98TH CONGRESS
1ST SESSION

To repeal the Legal Services Corporation Act
and to provide appropriations to the States for
provision of legal assistance for additional
fiscal years, and for other purposes

A BILL

To repeal the Legal Services Corporation Act
and to provide appropriations to the States for
provision of legal assistance for additional
fiscal years, and for other purposes

BE IT ENACTED
BY THE SENATE AND HOUSE OF REPRESENTATIVES
OF THE UNITED STATES OF AMERICA
IN CONGRESS ASSEMBLED,

SHORT TITLE

SECTION 1. This Act may be cited as the "Legal Assistance
Amendments of 1983."

REPEALER

SECTION 2. Subchapter X of Chapter 34 of Title 42 of the United
States Code, the Legal Services Corporation Act (§§ 42 U.S.C.
2996-29961) is hereby repealed.

SECTION 3. Chapter 24 of Title 31 of the United States Code is
amended by adding the following new subchapter IV:

"SUBCHAPTER IV - INDIGENT LEGAL ASSISTANCE

§ 1270. DECLARATION OF PURPOSE.

To provide indigents, with civil legal problems, access to the Nation's legal system at taxpayer expense.

§ 1271. DEFINITIONS.

As used in this Subchapter, the word --

(1) "attorney" means a person who is admitted to practice law and render legal advice in the jurisdiction where that person provides legal assistance and representation to eligible clients;

(2) "bar association" means the bar association with overall jurisdiction in a State;

(3) "eligible client" means any individual person who meets the eligibility requirements for receipt of taxpayer supported legal assistance, established in accordance with this Subchapter;

(4) "legal assistance" means the provision of civil

legal advice and representation consistent with the purposes and provisions of this Subchapter;

(5) "State" shall include each of the several States of the United States and the District of Columbia;

(6) "State instrumentality" shall mean either a State's Supreme Court or bar association, which shall have been designated in a State's enabling legislation as the instrument for providing legal assistance in the State pursuant to the provisions of this Subchapter;

(7) "State Supreme Court" means the court of ultimate jurisdiction or last resort in a State.

§ 1271. TRUST FUND.

(a) (1) There is hereby established on the books of the Treasury of the United States a trust fund to be known as the "Indigent Legal Assistance Trust Fund" (hereinafter "Trust Fund"). The amounts in the Trust Fund may be used only for payments to State instrumentalities as provided in this Subchapter.

(2) The Secretary of the Treasury shall be trustee of the Trust Fund and shall report to the Congress not later than May 15 of each year on the operation and status of the Trust Fund during the preceding fiscal year.

(b) There is appropriated to the Trust Fund, out of amounts in the general fund of the Treasury not otherwise appropriated, for the purpose of fulfilling the purposes of this Subchapter, \$241,000,000 for the fiscal year 1984, and \$241,000,000 for the fiscal year 1985.

(c) The Secretary of the Treasury is authorized to disburse the monies in the Trust Fund to the several State instrumentalities in such a manner that the total amount of funds distributed to any one State is proportionate to the total number of eligible clients in that State as to the total number of eligible clients in the United States (which shall be calculated so as to include eligible clients in the District of Columbia), as of September 30 of the fiscal year preceding the fiscal year for which an appropriation is made by Congress to further the provisions of this Subchapter.

§ 1273. DESIGNATION OF STATE INSTRUMENTALITY.

(a) To qualify for disbursement of any funds from the Trust Fund, each State shall be required to enact enabling legislation designating either the State Supreme Court or the State's bar association as the instrumentality for administration of a program of legal assistance to eligible clients in that State. The enabling legislation shall also provide for compensation of

attorneys representing eligible clients in that State by at least one of (but none other than) the following:

(1) Empowering the designated State instrumentality to directly compensate individual attorneys in private practice for legal assistance to eligible clients as the attorneys provide proof to the State instrumentality of services actually rendered on behalf of eligible clients; or,

(2) Establishment of a method of direct payment of funds, by the State instrumentality, to eligible clients or their attorneys in private practice based upon a voucher system or other method whereby proof of services actually rendered on behalf of eligible clients is provided to the State instrumentality.

(b) In their enabling legislation, States shall provide eligible clients the right to select and retain individual private attorneys of their choice.

(c) In their enabling legislation, States shall insure that attorneys compensated with monies from the Trust Fund are so compensated only for rendering legal assistance to individual eligible clients.

(d) From any Trust Funds disbursed to a State instrumentality pursuant to the provisions of this Subchapter, the State instrumentality shall have available to it, for payment of the cost of program administration and overhead, not more than

five (5) percent thereof. All other funds shall be used solely to compensate attorneys providing legal assistance to eligible clients. The State instrumentality shall issue regulations to assure the greatest number of eligible clients receive legal assistance with the funds available. These regulations may include, but are not limited to:

(1) a prioritization of the types of cases which can be handled by attorneys providing legal assistance to eligible clients;

(2) a limitation upon the amount of compensation which can be paid to any one attorney during any year; or

(3) any other reasonable method for preventing the amount of attorney claims for compensation from exceeding the funds available.

§ 1274. ELIGIBILITY.

An individual shall be deemed an eligible client and authorized to receive legal assistance pursuant to this Act if his annualized income is at or below the poverty level as defined by criteria issued by the Office of Management and Budget. An individual shall not qualify as an eligible client where that individual's lack of income results from refusal or

unwillingness, to seek or accept employment.

§ 1275. COMPENSATION OF ATTORNEYS.

Attorneys providing legal assistance to eligible clients shall be compensated at the rate of not more than \$30.00 per hour for each hour of services actively rendered on behalf of eligible clients. The State instrumentality shall determine the precise hourly rate of compensation to attorneys in the State. The State instrumentality shall also adopt accounting procedures to assure attorneys actually provide the legal assistance for which compensation is sought pursuant to this Subchapter.

§ 1276. PROHIBITED PRACTICES.

Funds disbursed from the Trust Fund may not be used to pay compensation to any attorney for the purpose of:

- (a) any political activity;
- (b) attempting to influence the opinion of the public, or any segment thereof;
- (c) attempting to influence the issuance, amendment, or revocation of any executive order by any Federal, State, or local agency or official;
- (d) attempting to influence the passage or defeat of any legislation by the Congress of the United States, or by any State or local legislative bodies;

(e) attempting to influence or participate in State ballot measures, initiatives, referenda or recall petitions;

(f) providing any legal assistance with respect to any criminal proceeding or in the case of a juvenile, proceedings which would be criminal if involving an adult;

(g) providing any assistance with respect to the initiation, formation, or organization of any coalition, group, corporation, committee, association, federation, or similar entity; or,

(h) providing legal assistance to any person who does not qualify as an eligible client.

§ 1277. AUDITS.

(a) Each State instrumentality shall annually provide the Secretary of the Treasury with an audit of the State instrumentality's legal assistance program books and records for the fiscal year. Each audit shall be prepared and conducted in accordance with generally accepted auditing standards by independent certified public accountants, certified by a regulatory authority of a State. The audit shall be received by the Secretary of the Treasury not later than January 1 of the year succeeding any fiscal year during which the State instrumentality received any funds from the Trust Fund.

(b) The Comptroller General of the United States shall have access to such audits and may, in addition, inspect the books,

accounts, records, files and all other papers or property of a State instrumentality which relate to the disposition or use of funds received from the Trust Fund.

(c) The Comptroller General of the United States shall, on or before May 15 of each year, provide the Congress with a report as may be necessary for Congress to evaluate the provision of legal assistance pursuant to this Subchapter.

§ 1278. FAILURE TO DESIGNATE STATE INSTRUMENTALITY.

In the event a State shall fail to designate a State instrumentality, as provided in Section 1273, within one hundred and eighty (180) days of the effective date of this Act, the Secretary of the Treasury shall thereafter be prohibited from disbursing Trust Funds to that State.

§ 1279. RIGHT TO REPEAL, ALTER, OR AMEND.

The right to repeal, alter or amend this Act at any time is expressly reserved.

§ 1280. APPLICABILITY OF OTHER PROVISIONS OF LAW.

(a) Funding of legal services recipients, provided in accordance with the Legal Services Corporation Act (42 U.S.C. 2996-29961), which is repealed hereby, shall continue at current levels for ninety (90) days after the effective date of this Act

to permit an orderly transition of legal representation of eligible clients.

(b) Upon the expiration of ninety (90) days after the effective date of this Act, an attorney representing an eligible client pursuant to the Legal Services Corporation act may continue to represent the eligible client at the hourly rate provided in Section 1275, should the eligible client so desire. Should the eligible client determine to secure the services of another attorney, the attorney which represented him pursuant to the Legal Services Corporation Act shall cooperate in the orderly transition of the eligible client's case files to the new attorney.

§ 1281. SEVERABILITY.

If any provision of this Act, or the application thereof to any person, organization or circumstance, is held invalid, the provision to other persons, organizations or circumstances shall not be affected thereby."

EFFECTIVE DATE

SECTION 4. This Act shall take effect on the date signed by the President of the United States.

[LJS1]



LEGAL SERVICES CORPORATION
733 Fifteenth Street, N.W., Washington, D.C. 20005

Dan J. Bradley
President

Writer's Direct Telephone
(202) 272-4210

December 4, 1981

Mr. B. A. Johnson
P.O. Box 572
Wadley, GA 30477

RE: Community Congressional Education Project
Wadley - Bartow Citizens League, Inc.

Dear Mr. Johnson:

We have reviewed the Phase II documentation you provided us on your LINC/CAP grant. It would be extremely helpful to us if you would rework your grantee reporting form and delete the references to voter-education, legislative and political process. Perhaps you could rephrase the language to say something to the effect that the project focused on citizenship and advocacy.

I have enclosed the original form that you completed, along with a new form. If you have any questions or need any additional information, please contact Floyd Price or me.

Thank you in advance for your cooperation in this matter. I wish you continued success on your project.

Sincerely,

Kenneth Smith
Director
Regional Operations and
Support Services
Office of Program Support

JKS:lbm

Enclosures

BOARD OF DIRECTORS — Hillan Rodham, Chairman, Little Rock, Arkansas

Steven L. Engelberg
Washington, D.C.
Revis O. Ortuque, Jr.
New Orleans, Louisiana

Cecilia D. Enquer
Phoenix, Arizona
Howard R. Sacks
West Hartford, Connecticut

Michael Kantor
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Robert J. Kutak
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Richard Trudell
Oakland, California

F. William McCalpin
St. Louis, Missouri
Josephine Worthy
Holyoke, Massachusetts

NOV 18 1981

LINCS/CAP
PHASE II
FORM 2-B

Evaluation Requirements
Grantee Reporting Form

NOV 24 REC'D

LINCS/CAP Project Title: Community Congressional Education Project
Organization: Wadley-Bartow Citizens League Inc.
Address: Mr. B.A. Johnson
Post Office Box 572
Wadley, GA 30477
Telephone: (913) 252-5877 or (913) 252-1116

1. Give a brief overview of program to date. We have conducted bi-weekly seminars/workshops, and disseminated information on voter education, citizenship, and the legislative process. Films have also been shown and posters/leaflets distributed throughout the community.
2. Describe any alternative measures which you have found necessary relating to original goals. Door to Door canvassing is order to stimulate interest and participation. This was done in addition to newspaper articles, leaflets & Radio announcements, plus free transportation.
Why were these alternative measures necessary? To arouse interest and necessary community participation.

3. Actual dates of activity: beginning and ending: Oct. 26, 1981
Thru Nov. 16, 1981

4. Has technical assistance been implemented? Yes ☒ No ☐

5. If yes, by whom:	Name	Title	Address
	<u>Teresa Blount</u>	<u>E. Library Asst.</u>	<u>130 Stearns St</u>
	<u>Betty Thomas</u>	<u>Community Development Coordinator</u>	<u>Wadley, GA 30477</u> <u>City of Wadley</u> <u>Wadley, GA 30477</u>

6. How are objectives being measured?

By response and participation in Seminars/workshops, increased voter interest in the community, increased voter registration according to city records.

7. Demonstrate achievement of short-range objectives.

Increased awareness of the necessity of good citizenship, voter responsibilities, and community involvement in the political process.

8. What materials are being used or produced?

leaflets, handed out on Seminars/workshops, films on voter education and the political process, posters throughout the community on voter education and citizenship.

9. List any problems encountered in Phase I of the program.

About 60% of the number reached is participating.

10. Briefly describe how the problem was solved, or planned activities.

Through the involvement of ministers and their supportive reach to their congregation on the importance and necessity of involvement and participation in the political process.

11. Who is the person primarily responsible for this project?

Name Mr. B. A. Johnson

Address Post Office Box 572

City/State/Zip code Wadley, GA 30477

Telephone number (912) 252-5877 or (912) 252-1116

Name of person completing this form:

William B. Blount

- 3 -

Note: Upon successful completion and return of this form, the remaining fifteen percent of the grant will be awarded.

Will B. Blat
Signature of person completing this form

11/16/81
Date

NATIONAL HEALTH LAW PROGRAM, INC.
Notes to Financial Statements
December 31, 1981

(5) CHANGE IN YEAR END

During 1980 NHLP changed its fiscal year end to December to correspond with its annual funding period from LSC. Management decided to have the 1980 audit delayed from June to December 31, 1980 and cover the eighteen months then ended. Because of the change in year end and the long accounting reporting period for 1980, management elected to not include comparative Balance Sheets and Statements of Support and Expenditures and Changes to Fund Balances in these financial statements.

(6) COST REIMBURSEMENTS - NORMAL PROGRAM WORK

Cost reimbursements during the year ended December 31, 1981 consisted of the following:

Travel	\$ 8,485
Printing	151
Newsletter	<u>1,110</u>
T Shirts	<u>1,770</u>
Other	<u>1,757</u>
	\$13,273

(7) UNUSUAL ITEMS

In a matter before the District of Columbia Office of Human Rights, Sheila Albright, a former employee of NHLP, sought injunctive and compensatory relief against NHLP for alleged discrimination in employment on the basis of her race and sex. The plaintiff demanded compensatory damages of \$30,000. In February, 1982, this matter was settled with the payment of \$8,000 and dismissal of the lawsuit. The amount of the settlement and related legal costs of \$2,402 have been accrued at December 31, 1981.

In a separate matter, management determined that it was not probable that the Program would collect a receivable of \$2,130 from a former landlord at the Program's old Santa Monica location. Accordingly, the unrecoverable deposit was written off in 1981.

The litigation settlement and the unrecoverable deposit are unusual and non-recurring expenses for the Program and have been included in the caption "Unusual Items" in the Statement of Support and Expenditures and Changes to Fund Balances, as follows:

Payment in settlement of Albright litigation	\$ 8,000
Legal fees relating to the above	2,402
Write off of old rent deposit	<u>2,130</u>
	\$12,532

WILLIAM R. LUCAS & COMPANY
CERTIFIED PUBLIC ACCOUNTANTS

HEALTH LAW NEWSLETTER

NATIONAL HEALTH LAW PROGRAM.
2401 Main Street
Santa Monica, CA 90405
(213) 392-4811
Branch Office:
1424 16th Street, NW, #304
Washington, D.C. 20036
(202) 232-7061

Acting Editor: Geraldine Dallek

ISSUE NO. 105 JANUARY 1980

NEW NH&LP STAFF

Judith Waxman, formerly an attorney with NEH's Public Health Division, has joined NH&LP in our D.C. office. Geoffrey Brown, currently editor of Survival, an anti-nuclear power newsletter, has joined the west coast staff as editor of the Health Law Newsletter. WELCOME.

AMERICANS WANT NHI

Comprehensive National Health Insurance is still an identified goal of the majority of Americans. Results of an August, 1979 Gallup poll show that:

(1) 67% of the public feels that there is a need for National Health Insurance and of these, 54% feel strongly that there is a need. Only 20% feel that there is no need for NHI.

(2) Support for NHI is strongest among non-whites, low social-economic groups, union members, central city residents and persons living in Eastern states. A majority of all groups, however, (whites and non-whites, insured and uninsured, rural and urban, etc.) support NHI.

(3) 51% of those interviewed expressed little or no confidence in their ability to pay for a major illness and 35% were not too or not at all confident of their ability to pay for usual medical costs.

(4) Given the choice and projected cost of a comprehensive plan, a 10% deductible plan, and a catastrophic plan, 36% chose the comprehensive plan, 26% chose the 10% deductible plan, and 21% chose the catastrophic plan.

(5) 43% of those interviewed would like to pay for the plan through premiums compared to 38% who prefer to pay through taxes.

(6) 45% would prefer private insurance companies to administer a NHI plan while 38% would prefer the government.

(7) While a plurality of the public believe that government regulation increases the cost of health care, a majority feel the benefits of regulation outweigh the drawbacks.

ANOTHER MEDICAID CUTBACK SCHEME

New York and a number of other states have found an effective way to cut their Medicaid rolls. The State has been automatically terminating from their Medicaid program all persons who lost their Supplemental Security Income (SSI) eligibility.

Notice of SSI termination is sent to New York from the Social Security Administration on a weekly computer tape. The fact that the information on the tape could be in error, includes persons who were illegally terminated from SSI or individuals who might still qualify for Medicaid has mattered not one whit to State officials. Off SSI, off Medicaid.

SSI is the federal welfare program for the poor aged, blind and disabled. All state Medicaid programs include SSI

The National Health Law Program is a Legal Services back-up center funded by the Legal Services Corporation, Washington, D.C. The Health Law Newsletter is distributed, free, to Legal Services clients and attorneys and to health providers and consumers who wish to learn about health-related problems of the poor. Please enclose your old address label when moving.

HEALTH LAW NEWSLETTER

NATIONAL HEALTH LAW PROGRAM
2401 Mout Street
Santa Monica, CA. 90405
(213) 392-4811

Branch Office:

1424 16th Street, N.W. #304
Washington, D.C. 20036
(202) 232-7061

Editor: Geoffrey Brown

ISSUE NO.106 FEBRUARY 1980

HYDE DECLARED UNCONSTITUTIONAL.

In a landmark victory for low-income women and pro-choice advocates, Federal District Court Judge John F. Dooling ruled the Hyde Amendment unconstitutional.

In a 352-page opinion, issued on January 15, 1979, Judge Dooling held that the denial of Medicaid funding for abortions violates the First (religious liberty) and Fifth (equal protection, due process, privacy, vagueness) Amendments. The long-awaited ruling is the result of a nationwide class action lawsuit, *McRae v. Harris* (formerly *McRae v. Califano*), filed in 1976 by the Center for Constitutional Rights, the American Civil Liberties Union and Planned Parenthood of New York City.

The ruling that the Hyde Amendment violates constitutional freedoms of religion is the first of its kind in an abortion case. Discussing at length the teachings of several religions, Judge Dooling found that religious beliefs differ widely over the morality of abortion. The court found that the Hyde Amendment was thus religious rather than political in nature and that its enactment was significantly influenced by religious considerations—especially by the actions and tenants of the Roman Catholic Church.

The Court therefore found that Hyde was the imposition of a single religion's beliefs on a woman's conscientious decision whether to bear a child.

"A woman's conscientious decision," the Court wrote, "in consultation with her physician, to terminate her pregnancy because that is medically necessary to her health, is an exercise of the most fundamental rights, nearly allied to her

right to be, surely part of the liberty protected by the Fifth Amendment, doubly protected when the liberty is exercised in conformity with religious belief and teaching protected by the First Amendment...The irreconcilable conflict of deeply and wisely held views on this issue of individual conscience excludes any legislative intervention except that which protects each individual's freedom of conscientious decision and conscientious non-participation."

The opinion details the horrendous consequences for poor women and their families of Hyde restrictions. From extensive medical and psychological testimony, Judge Dooling concluded that abortions are a medically necessary service and must be reimbursed under the Medicaid program: "The evidence warrants the finding that poverty entrains enhanced health risks, nutritional deficiencies, and limitations on access to health care that make the incidence of medically necessary abortion markedly higher among the poor than among those who have the means to maintain well-nourished life and regular health care."

The "life endangerment" and severe and longlasting physical health damage standards of the 1978-79 Hyde Amendment are so "alien to current medical standards," Judge Dooling found, that they "exclude the greater part of the cases in which the profession would recommend abortion as a medically necessary

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January 11, 1980

NHLP WASHINGTON ADVOCACY QUESTIONNAIRE

The National Health Law Program would like to increase the involvement of legal services workers and community organizations in Washington legislative and administrative advocacy. This increased involvement would include an expanded information service for field attorneys, paralegals, and clients as well as additional opportunities for field input in Washington advocacy. The sooner this form is completed and returned, the quicker we can add your name to our advocacy network.

In completing the following questions, please use the following numerical code for subject areas of interest:

- | | |
|------------------------------|--------------------------------------------------|
| 1. Medicaid | 11. Civil Rights |
| 2. Medicare | 12. Regulatory Reform |
| 3. Cost Containment | 13. Reproductive Freedom |
| 4. Health Planning | 14. Long Term Care |
| 5. Public Hospitals | 15. HMOs |
| 6. Child Health | 16. Health Manpower-National Health Service Corp |
| 7. National Health Insurance | 17. Patients' Rights |
| 8. Hill-Burton | 18. Indian Health |
| 9. Rural Health | 19. Neighborhood Health Centers |
| 10. PSROs | 20. Other: _____ |
| | 21. Other: _____ |

LEGISLATIVE ADVOCACY

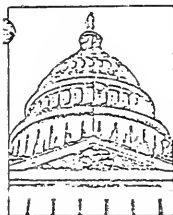
I would like to receive copies of bills and other information on Washington Developments in the following areas (list all numbers that apply): _____

I am willing to assist in legislative advocacy on behalf of eligible clients by writing letters and making telephone calls to legislators on the following issues (list all numbers that apply): _____

I am willing assist in legislative advocacy on behalf of eligible clients by travelling to Washington to testify and/or lobby on the following issues (list all numbers that apply): _____

I am willing to disseminate information on Washington legislative developments to other legal services workers and community organizations in my state on the following issues (list all numbers that apply): _____

(over)



Public Hospitals

Troubled Hospitals Ask Congress For Aid

The nation's cities "are losing the fight" to pay for public hospitals—the "hospitals of last resort" for an estimated 11 to 25 million Americans without insurance coverage. That's the warning given by Carol Bellamy, city council president of New York City, to a House Ways and Means Health subcommittee on Feb. 29. Chaired by Rep. Charles B. Rangel, the subcommittee is holding a series of hearings on financially troubled hospitals. Hearings in Washington and New York will be followed by an April 28 hearing in Chicago, where Cook County General Hospital is suffering severe financial problems.

For poor Blacks and Hispanics, the public hospital "is not only the provider of last resort, but often the only provider," testified Dorothy Lang of NHEHP before the Rangel subcommittee. Private hospitals often refuse those who are too poor to pay, or even those who can pay with Medicaid. Many hospitals which are obligated to serve the poor as a result of the federal Hill-Burton funds they received, still refuse to honor their obligations. Private hospitals are often too far from poor areas, and often have some sort of racial or language barrier to equal access.

So that leaves public hospitals with the responsibility of caring for the poor, Lang said. The poor need public hospitals not only for the inpatient facilities usually expected from a hospital, but also as a substitute for the primary care doctor—whose services are usually nonexistent in poor communities.

But public hospitals are beset by a multitude of problems ranging from cursing shortages to inadequate supplies to outdated physical plants. Finances are at the root of most of these troubles. Highly dependent on city or county revenues which fluctuate with political moods, the public hospitals have had no protection against the tides of inflation in medical care costs. And Medicaid has left many poor people uncovered for basic medical needs, as well as failing to require coverage for so-called "optional" items. Inadequate Medicaid reimbursement, furthermore, puts a heavy load on hospitals serving the poor.

Private hospitals are partly to blame for the crisis in public hospitals. By refusing poor people under a variety of schemes, private hospitals have "dumped" unprofitable poor patients on the public facilities, while keeping the insured patients for themselves. Also at fault are tax reduction and spending limitation measures which, by causing cuts in Medicaid benefits, for example, just increase the load of poor people on the local public hospital. In this perverse kind of medical "deficit spending," cuts in medical benefits today only postpone illnesses, which are always more expensive to treat tomorrow.

What can be done? Short of a national health insurance plan, Dorothy Lang says, direct grants to financially distressed hospitals would be helpful, along with changes in Medicaid reimbursement which would allow public hospitals to figure their free care costs into their formulas for Medicaid reimburse-

ment. Equally useful, she adds, would be better Medicaid reimbursement for outpatient services—which are practically the only care of any kind available in poor areas. In addition, hospitals should get greater pressure from HEW to honor their Hill-Burton promises of free care and equal access for the poor; and private hospitals with charitable tax exemptions should be required to provide some services for the poor.

Whether these proposals are adopted by an increasingly budget-conscious Congress and Administration remains to be seen at this point. But the one certainty is the urgency of immediate action to save public hospitals and the care they provide to the poor.

Three Texas Clinics Struggle Toward Birth

In Kingsville, Texas, you'd better not have a baby if you're poor—it's a sixty-mile drive to find an emergency room that takes Medicaid. In Uvalde, Texas, thirty people a week have to travel 60-80 miles because local doctors won't treat poor people. In Del Rio, Texas, it's the same story: no access.

But things are changing in south Texas—thanks to community groups in all three towns which are working with Texas Rural Legal Aid to get money to set up health clinics for the poor. One group in Del Rio got approval for a \$311,827 start-up grant from HEW in late February, and applications have been completed for similar Rural Health Initiative (RHI) grants by Kingsville and Uvalde community groups.

HEW's Rural Health Initiative combines money from the various federal funding programs for development of primary health care in rural areas. The RHI support comes in the form of grants from the community and migrant health centers (CHC & MHC) programs, as well as medical personnel from the National Health Service Corps. Although HEW decides which applicants get its limited funds, groups developing their clinics must go through a number of local hurdles in order to be successful.

"It was a battle each time," says Legal Services lawyer Isabel Garcia of the various hearings at which the predominantly-Chicano group Buena Salud had to defend its proposal before the local Health Systems Agency (HSA). The city and the local hospital attacked the group for having consumers on its board of directors, and then when Buena Salud decided to add a provider member to the board, the doctors in town objected to their requirement that the new member be bi-lingual (Buena Salud conducts its business in Spanish).

Garcia says that the medical community was never critical of a recently-discredited migrant health center whose funds were finally cut off by HEW. The migrant center had no migrant users on its board, she says, nor did it serve more than an estimated 1% of the farm population.

In the face of intense opposition, Buena Salud's strongest achievement, Garcia says, was "not to deal with all the paranoia created by the HSA and the doctors, but to keep on with our work." The key thing is to make it difficult for them to deny you. Their method? "We just documented everything."

A similar suggestion comes from Viviana Cavada, a Legal Aid lawyer working with Trabajadores Unidos Health Inc. in Kingsville. The Chicano group used birth and death certificates, mid-wife interviews and surveys of doctors to document the country's problems. As a result, it was officially designated as a medical care problem area in several respects—which makes their application for an HEW clinic grant much stronger. As a condition to receiving RHI support, federal law requires an area

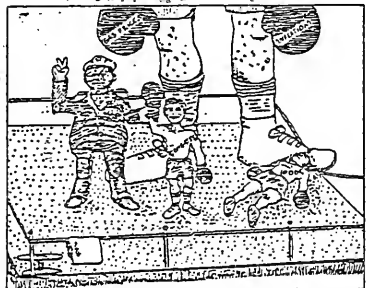
Dailies: Washington

Congress, Carter Slash Health Budget

Budget cuts by President Carter and two Congressional Budget Committees have succeeded in derailing—at least temporarily—spending limitation proponents who had advocated even larger cuts. But health programs suffered serious slashes in the process, including cuts ranging from health planning to community health centers to the National Health Service Corps.

Spending limitation proponents want the federal budget tied to a set limit, based on a fixed percentage of the Gross National Product (GNP). To head them off, Carter took the unusual step of presenting a second trimmed-down budget in March to replace his first budget, which came out in January. The January budget had a deficit of \$15.6 billion, and in the ensuing two months, the ravages of inflation had put Carter's budget another \$13.5 billion in the red. So the President had to make cuts—or raise revenues—by about \$30 billion in order to balance the budget.

As a result, the health budget only inched up from \$60 billion last year to \$71.1 billion this year, and two-thirds of that



Budget Bout—Round One.

increase was due to inflation. Budgets similar to the President's were approved by the House and Senate Budget Committees.

On the casualty list in Carter's latest budget were community health centers (cut \$33 million), National Health Service Corps (cut \$47 million), health planning (\$41 million), maternal and child health (\$10 million), family planning (\$15 million), the financing, compliance and conversion program (\$10 million) and emergency medical services (cut \$5 million).

Two million low-income children and 100,000 pregnant women will have to wait at least another year for medical help due to deferral of the Child Health Assurance Program (CHAP), whose delay will save \$400 million. Expansion of home health services and other benefit improvements under Medicare and Medicaid will also be postponed.

A coalition to lobby against the cuts is being led by AFL-CIO President Lane Kirkland, who derided the budget-balancing act

as economic "nonsense" which "runs counter to the general welfare of the American people, especially the weak, the poor, minorities and the elderly of our society." Joining in the coalition are more than 140 organizations, including NHEP, the Americans for Democratic Action, the Urban League, and the American Federation of State, County and Municipal Employees.

If Congress and the President are interested in balancing the budget, said NHEP's Judy Waxman in Washington, they should consider cuts in the defense budget as well as methods to increase revenues, such as tax reform. Under present proposals, the poor bear the load of an economic juggling act of dubious value.

Sellers Tagged to Head HCFA Beneficiary Services

Barney Sellers was recently appointed as the first Director of HCFA's Office of Beneficiary Services. This newly-established office will represent the interests of Medicare and Medicaid beneficiaries in the Health Care Financing Administration, the HEW agency that administers Medicare and Medicaid. NHEP welcomes the appointment of Sellers, who was formerly Deputy Director of the American Health Planning Association, before that, he worked with the National Health Council. The new Director can be reached at 6401 Security Boulevard, Baltimore, Md. 21235. (301) 594-8131.

Three Bow Out of Congress

Three Representatives recently announced they will not seek re-election to Congress. Rep. Harley Staggers (D-W.V.), Chairman of the House Committee on Interstate and Foreign Commerce, will not make an election bid at the end of his current term. Nor will Rep. David Satterfield (D-Va.), who was a tremendous thorn in the side of consumer advocates during consideration of the Health Planning Amendments in 1979. The third Representative to bow out is Tim Lee Carter (R-Ky), who was a staunch defender of poor people during both the Health Planning Amendment battles and the consideration of the Child Health Assurance Program (CHAP).

FTC Gets Funding Injection

The Senate and House approved a joint resolution for continued funding for the beleaguered Federal Trade Commission, which had been operating without funds for nearly two weeks. The FTC has been under fire for moving toward regulation of doctors and dentists, among others. The March 28 resolution is being followed up by on-going conference committee work on legislation to reauthorize the FTC. Probably the key stumbling block in that committee has been the House's insistence on a one-house legislative veto over FTC actions.

Local success? Local setback? Let the *Health Advocate* know about it, and we'll share it with our readers.

Tackling the Crisis in Public Hospitals (p.5)

NEED

Health Advocate

Newsletter of the National Health Law Program No. 111 August 1980



Supreme Court Limits Abortions

On June 30, 1980, the U.S. Supreme Court dealt a sharp blow to poor women in a 5 to 4 decision upholding a Congressional prohibition against use of federal funds for abortions. In *Harris v. McRae*, the Court upheld the controversial Hyde Amendment, introduced by Henry Hyde (R-ILL.) and passed by Congress in 1976. The most recent version of the bill allows federal funding of abortion only to save the life of a woman or in cases of immediately reported rape or incest. The decision reverses a January

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Hill-Burton

Trainings Pay Off, Bring Increased Advocacy

Ann Swerlich used to get blank stares when she mentioned Hill-Burton at local Miami hospitals. Not any more—thanks in part to a Hill-Burton training session she helped arrange. Similar trainings from Massachusetts to Alabama have increased advocacy nationwide.

The sessions vary from two hours to a day and a half in length, and involve ten to fifty people per session. Formats vary: in Massachusetts, Barbara Ferrare used a slide show showing hospitals, patients and administrators to pinpoint the issues. Arizona's Joe Donovan plans to use role-playing between "administrators" and "patients" to dramatize his points; a 20-min. videotape will add to the presentation. Barry Puett in Utah says she finds small groups are most effective, and that it's best to minimize the technicalities. Other organizers confirm this last point, saying an emphasis on practicalities is usually well-received.

One group which has no qualms about thinking big is the Alabama Coalition Against Hunger, which along with Legal Services of Alabama ran over a dozen workshops on Hill-Burton around the state. Each workshop was preceded by a local press conference; over 11,000 wallet cards were distributed through the sessions; and 560 people were trained at the first seven workshops alone. "Our basic goal," says Bill Edwards of the Coalition, "was to make Hill-Burton a household word." Andrea Levere and Mike Mirra also took their trainings statewide in Tennessee, and found they both got more attendance and "gave people more of an investment" through greater personal contact.

Often the trainings are part of a larger Hill-Burton strategy. "People came to the workshops, got upset, got

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Abortions

Continued from Page 1

1980 Federal District Court ruling made by Judge John F. Dooling which declared the Hyde Amendment unconstitutional. In *Williams v. Zbaraz*, the second case considered, the Court upheld an Illinois law prohibiting use of funds even for women needing medically necessary abortions.

The Supreme Court decision does allow for states to opt to pay for abortions for indigent women. The only route open for legislative advocates is to encourage their state legislatures to pick up the tab for abortions.

Meanwhile, since Medicaid continues to pay for sterilizations, many women will be forced into permanently cutting off their childbearing option for fear that they would not be able to have an abortion if they needed one.

Equally alarming is the prospect that an as-yet-unknown number of poor women will suffer ill health and even death as a result of not being able to have a medically necessary abortion; others will be forced to seek a less safe abortion by an unskilled or inexperienced practitioner.

—FH

Victory for Hill-Burton Regs on Appeal

Rejecting a challenge from the American Hospital Association, a federal appeals court in Illinois agreed with the district court and upheld the denial of a preliminary injunction against HEW's new Hill-Burton regulations. By a 2-to-1 decision, the Seventh Circuit Court of Appeals agreed that the AHA had not presented a strong enough case to enjoin HEW (now HHS) from enforcing the tougher rules on uncompensated and community services.

But the court's decision had some significant drawbacks. Neither the majority opinion nor the lengthy dissent provided much support for the regulations. The AHA had contended, among other things, that HEW exceeded its authority by making the tough new regulations. The majority opinion, while upholding HEW's authority in general, did concede that the dissenting opinion might be a "helpful brief" when the merits of the case are heard. And the dissenting opinion itself is a sharp attack on the new regs, calling them a case of "administrative overkill." (*American Hospital Assoc. v. Harris et al.* Civ. No. 79-2162, decided July 2, 1980).

Copies of the decision are available from Armin Friefeld at NHeLP's L.A. office. The lower court's opinion is reported at 477 F. Supp. 665 (N.D. Ill. 1979).

—GB

Harris Appoints NHeLP

Secretary Harris appointed NHeLP director Sylvia Drew Ivie as Director of the Office for Civil Rights in the Dept. of Health and Human Services, effective August 3rd. Ivie named Lucien Wulsin, Jr. as acting director at the National Health Law Program.

Hill-Burton Trainings

Continued from Page 1

angry, and then we did the organizing," says Judy Rausch in Indianapolis. In her case, organizing meant finding a health law specialist and a lay advocate to cover each of sixteen "Hill-Burton regions" in Indiana. Rausch hopes each of these regional teams will sponsor their own trainings as well as do comprehensive surveys of local hospital compliance. A training in Florida led to formation of a "workgroup" which plans to use surveys and publicity to press the community service obligation of Hill-Burton. In Arizona, organizers hope their trainings will foster growth of community advocacy centers covering many issues.

So what have all these plans accomplished? Like the trainings themselves, the results are varied. Utah advocates have generated newspaper articles all over the state, helped a Salt Lake City TV station do a half-hour expose, and are demanding stiffer enforcement by the state. In Florida, a training helped reinforce the advocacy of the half-dozen lawyers around that state who've brought lawsuits, generated newspaper publicity and surveyed local hospitals. Bill Edward in Alabama says the number of Hill-Burton applications "has tremendously increased" since statewide workshops were held.

Advocates say they are mostly encouraged by the results of the trainings, which were funded in part by training grants from the Legal Services Corporation. Meanwhile, the advocacy goes on. As Arizona's Joe Donovan says, "All it's gonna take is some complaints and some publicity. Then the hospitals will have to respond—or they'll find themselves in court."

—GB



Alabama's failing Medicaid program got a shot in the arm in May when the governor and legislature came up with \$20 million to keep the program going through at least October 1. Though new state taxes and money transfers have temporarily saved the program, next year's budget is still in question, say political observers.

Raquel and Isidro Aguinaga are suing Plains Memorial Hospital in Dimmitt, Texas for one million dollars after their eleven-month-old son Isidro died on Dec. 8, 1978—shortly after being refused admission to the hospital. Despite admission orders by the hospital's acting chief of staff—who said the baby was very seriously ill—the Aguinagas were told by hospital staff that a \$450.00 deposit was necessary before the child could be admitted. The hospital had received \$728,000 in Hill-Burton funds, and had chosen the open-door compliance option in 1978 which required that no person be denied admission on the grounds of inability to pay. Other alleged violations in the complaint are based on Title VI of the 1964 Civil Rights Act, the Fourteenth Amendment, and Texas laws on emergency services. (*Aguinaga et al. v. Plains Memorial Hospital*, N. D. Texas #279-205.)

New Ballgame in Congress (p.2)

Consumer Action How-to's (p.6)

HELP

Health Advocate

Newsletter of the National Health Law Program No. 115 December 1980

New CON Regs Offer Hope for Access

New avenues to increase access to health care for the poor and minorities and to stop public hospital closures are now available through recently issued Certificate of Need (CON) regulations. Following several months of vigorous advocacy by legal services clients and workers, the Public Health Service in the Department of Health and Human Services (HHS) issued its final CON regulations (45 Fed. Reg., 69740, October 19, 1980; codified at 42 CFR §122.301 et seq.).

The new regs require Health Systems Agencies (HSAs) and State Health Planning and Development Agencies (SHPDAs) to adopt 21 criteria for CON reviews. The most important require health planners to examine whether and how well the proposed project meets the health needs of the poor, handicapped, minorities, women, the elderly and other medically underserved populations. Specifically, the HSAs and SHPDAs must consider:

(i) "The extent to which medically underserved populations currently use the applicant's services in comparison to the percentage of the population in the applicant's service area which is medically underserved, and the extent to which medically underserved populations are expected to use the proposed services if approved."

...a boon to advocates fighting public hospital bed reductions and service eliminations...."

(ii) "The performance of the applicant in meeting its obligation, if any, under any applicable Federal regulations requiring provision of uncompensated care, community service, or access by minorities and handicapped persons to programs receiving Federal financial assistance."

(iii) "The extent to which Medicare, Medicaid and medical assistance programs are used by the applicant's service area."

Cont. on Page 5

Poor Hit Hard Abortion Cut-off in Chicago

On October 11, 1980, Chicago's Cook County Hospital abruptly closed down its abortion service. The cutoff was authorized by George Dunne, president of the Cook County Board of Commissioners who took over control of the public hospital in December of 1979. County Commissioner John Stroger explained to the *Health Advocate* that "the Board of Commissioners had been unaware that Cook County was providing abortions until we were recently notified by members of the hospital staff". Abortions were stopped as soon

Cook County authorities claim they were 'unaware' that 3500 abortions a year were done there.

as the Board became aware that they were being done. This contention is hard to believe since Cook County Hospital has been performing approximately 3500 abortions a year.

The cutbacks in public hospital services, coupled with the recent Federal, state and local election of many anti-abortion politicians, come on the heels of the Hyde Amendment restrictions. It signals another tremendous setback in reproductive rights for poor women.

The Board of Commissioners gave no advance notice of the cutoff. Community people, including 120-180 women with appointments scheduled for abortions at the hospital, only found out when they called or came to the hospital and were told to contact Planned Parenthood for abortion information.

Stroger maintains that since Cook County Hospital is in such financially weak condition, they could not justify maintaining an abortion service; a service he and other commissioners do not feel is as needed as other services. Those fighting the abortion cuts point out that Cook County's

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Dateline: Washington

Reconciliation Power Grab Hurts Poor

Congress, intent on balancing the federal budget, passed the first budget resolution this spring, slashing human aid programs. Not long after the budget resolution passed, however, it became clear that incorrect estimates, inflation and the recession had thrown the balanced budget way out of line.

In an attempt to regain that balance, the Budget Committees in the House and the Senate ordered each substantive committee chairman to propose changes in the programs under their jurisdiction that would result in financial savings to the federal government. Political chaos resulted as committee chairmen scrambled to propose cost-saving changes (and other unrelated bills) in the legislation under their jurisdiction. These proposals became part of

Ironically, many provisions...had no cost-saving effect at all...

the Reconciliation Bill for each respective body (HR 7765 and S.2885).

While some chairmen made proposals that were part of reform packages already under consideration or passed by the committee, any program that cost money was fair game for the cost-cutters. Committee chairmen could lift cost-saving measures from legislative reform packages while ignoring progressive counter-proposals which may or may not also have saved money. The mandate to save money provided a convenient excuse for the committee chairmen to forget their accountability to the beneficiaries their actions were affecting.

Ironically, many provisions in the Reconciliation Bills had no cost-saving effect at all. These bills became vehicles for enacting statutory changes that might not pass if they had to go through the usual, detailed review by a committee. Thus, tacked onto the Reconciliation Bill, they amounted to an end-run around the traditional safeguards built into the committee review process.

Meanwhile, budget committee members gained enormous power to determine Congress' course of action. It was, after all, the budget committees in the House and Senate which told the other committees how much money they had to cut from their areas. And budget committee members were fully-participating members in the House-Senate conferences to iron out differences between the two bodies; this is a power they did not possess before reconciliation.

The House-Senate conference was unprecedented in scope this year. Known as "the circus" by Hill long-timers, the conference consisted of 123 conferees in eleven different sub-conferences, each of which handled a different subject. Participating in these meetings were not only the members of the regular committees in charge of each substantive area, but also the members of the budget committees.

Medicaid provided a good example of this process at

work. Dollar amounts of savings were assigned to the House Commerce and Senate Finance Committees; they had to make cuts in their areas' programs. Among the proposals was a provision to eliminate recipients' "freedom of choice" of providers — a right, currently protected by statute. Poor peoples' advocates argued that by restricting poor people to certain providers, a dual-track discriminatory system would be fostered. But the sub-conference committee members were unconvinced by this and other arguments.

So the "freedom of choice" elimination provision became part of the Budget Committee's Reconciliation Bills, and went to the appropriate sub-conference committee (consisting of members of the Commerce Committee, the Ways & Means Committee, the Finance Committee, and the House and Senate Budget Committees). But this sub-conference found itself faced with over eighty Medicaid and Medicare provisions for its consideration.

Ultimately the sheer complexity of this process slowed it down. By the time Congress adjourned in early October, only three of the eleven sub-conferences had completed their work. The "Medicaid" sub-conference got totally bogged down and never did tackle many of the more complex provisions. The Senate version to eliminate "freedom of choice" provision, along with a transfer of assets proposal, was never fully discussed.

Many observers now predict that reconciliation will simply expire of its own sheer weight. Since Congress will be holding a lame duck session, committee staff are continuing their reconciliation negotiations, anticipating that Congress will want to complete this task upon its return. But with so many incomplete bills awaiting its attention — like the fiscal year '81 appropriations and a second budget resolution — Congress is by no means certain to finish reconciliation.

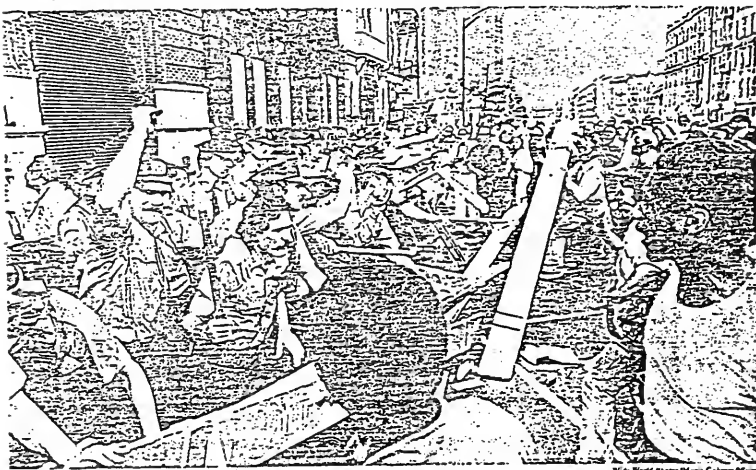
...budget committee members gained enormous power to determine Congress' course of action...

Nevertheless, reconciliation remains a process that can be very detrimental to poor people, since it bypasses the usual checks and balances under which committees operate. Provisions can be passed that hurt legal services clients, while the committee has no pressure to add other beneficial provisions to ease the impact of the cuts. Budget committee members also assume greater power; these members are not necessarily familiar with — nor favorable to — the dilemmas of poor people. Lastly, the reconciliation process provides a quick route for provisions to be tacked onto the final bill, bypassing the usual committee actions. Such hasty lawmaking poses a threat to safeguards which help protect the interests of legal services clients.

Special Issue: Cutbacks,
Conflict in New York

Health Advocate

Newsletter of the National Health Law Program No. 116 January 1981



Holding Out in Harlem: A Community Fights for its Hospitals

Mayor Edward Koch had come down to East Harlem last October with what he thought was good news. He had gotten federal approval for a five-year, \$77-million grant to help Metropolitan Hospital pick up the workload anticipated by the closing of nearby Sydenham Hospital. But it wasn't as easy as he thought. As Koch spoke to about patients and employees, he was interrupted by a man who

yelled, "What about Sydenham? You have no emotion; you have no feeling for the people." The mayor yelled back, "We're not going to turn this into a confrontation."

But the shouting persisted. "We're going to have you removed," Koch said. "No announcement is going to appease the

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Victims of Cuts Face Uncertain Future

Every week Octavia Jessie gets in her car and leaves Likes Fork, West Virginia for a 60-mile drive over tortuous mountain roads, potholed by the incessant traffic of coal trucks. Her destination is the hospital where the 63-year-old widow receives weekly chemotherapy treatments for cancer of the liver and bowel.

Her income of \$417 a month — from Social Security and black lung benefits — must support both herself and her retarded son. Medicaid paid for a 28-day hospital stay for cancer surgery in January, 1980, which cost \$5,568. Medicaid also pays for her weekly treatments at \$56.75 a visit. Later on this year she will need a three-day checkup in the hospital.

But the medically needy part of the Medicaid program — which pays for her care — may not be funded this year for hospitalizations like hers. Even if it is, she is only eligible if she spends \$234 of her \$417 monthly income on medical bills, so that she only has \$183 left (which is the state-defined medically needy "spend-down" level). In addition, the state tacked on a 30-day limit on Medicaid-paid hospital stays, so if she's hospitalized for surgery again it could wreak havoc on her meager finances.

Three thousand miles away, Daniel Lewis faces a similar dilemma. A resident of Yakima, Washington, he suffers from hemophilia, pain from hemarthrosis, and ankle and knee problems. His income is \$348 a month, from Social Security disability

One Utah woman went without teeth for a year because Medicaid wouldn't pay for dentures.

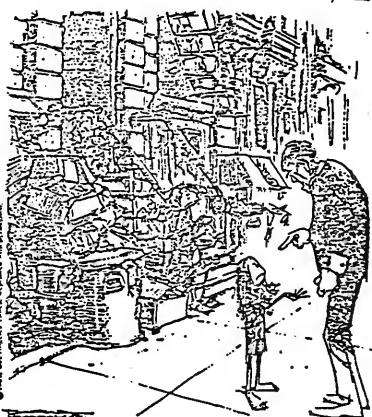
and veterans benefits. Under the state's medically needy program, he's been getting three treatments a week for his hemophilia. He had to make 28 in-patient visits to the hospital in 1979, and 21 in 1980.

On March 1, the state moved to cut out its medically needy program, under which Daniel's care was paid. Luckily a Legal Services suit (*Clark v. Gibbs*) staved off the cut with a temporary injunction on March 11, but as attorney Debbie Maranville said of the suit, "It's all procedural stuff that they can remedy." So the cuts may be pushed through later in another form, to the detriment of Daniel Lewis and many others.

Carolyn Arnold of Midvale, Utah, was a victim caught in the irrational jaws of "cut fever." She gets \$389 a month from AFDC to support herself and three children. When all of her teeth deteriorated from a bone and gum disease brought on by her former husband's beating, her dentist and an oral surgeon advised her to have all but two of her teeth extracted so she could put in dentures. So her teeth were extracted in February, 1979.

A month later, Medicaid told her it could not pay for the dentures (\$600) or the remaining costs of the surgery (\$660). For more than a year, she was unable to eat meat or other solid foods. Her nourishment dropped. She was refused employment because of her appearance and manner of speech. She was discouraged from her former active involvement in church, social and school activities. Finally, after Legal Services litigation in *Campos v. Mitchell*, Medicaid agreed to pay for the dentures.

— GB



"YOU DON'T LOOK TRULY NEEDY TO ME ... NEEDY PEOPLE, BUT NOT TRULY NEEDY"

Medicaid Cuts Held at Bay in Courts, State Capitols

Legal Services workers have stopped about twenty percent of some 105 proposed state Medicaid cutbacks in the courts over the last year and a half. And along with their clients, they provided testimony to state legislatures and administrators which led to another thirty percent of those proposed cutbacks being abandoned. The cutbacks — all of which would have hurt poor people's health — were opposed on a variety of grounds: procedural as well as substantive. And the advocates' success has won grudging respect from Medicaid administrators in many states.

Says Legal Services lawyer Rick McHugh, "When we call them up to say this or that might be illegal, they're being much more responsive." McHugh says a recent suit on Kentucky Medicaid transportation (*Fant v. Stumbo*) was "our opening salvo" to establish credibility with the state administration.

The court gave McHugh's clients a temporary restraining order and preliminary injunction to stop cuts in the \$2 million program which provides transportation to medical facilities for 8,000 needy families and individuals each month. But the cut-imposed limit of 4 trips a month per patient is upheld by the court, says McHugh, patients who need regular ongoing treatments like physical therapy for a broken hip or allergy shots will be hurt. "The person who has a minor cold will get (transportation). But people with larger, non-emergency problems will get cut off," worries McHugh.

Utah advocates scored a clean sweep last year over two separate rounds of cuts which would have included shaking

Painless Ways to Cut Medicaid Costs (p. 2)
Uncertain Future for Cut Victims (p. 3)

Health Advocate

Newsletter of the National Health Law Program No. 119 April 1981

29 States Weigh Medicaid Cutback Proposals

Twenty-nine states have proposed reductions in their Medicaid programs over the last eighteen months, but only about half of the hundred-odd proposals are still going forward. For people aided by Legal Services have gone to court and opposed a full twenty percent of the proposals (see p. 3). Another thirty percent have expired at the executive or legislative level. But half of the proposals are either pending or in effect — almost all of them to the detriment of poor peoples' health (see p. 3).

State cuts are expected to worsen if Congress follows Reagan's bidding and approves a \$1 billion cut in federal Medicaid expenditures for next year. Even if this Medicaid 'cap'

'If they don't get these drugs, they're going to have to go into the hospital.'

not passed, Congress will be asked to broaden states' powers to cut back eligibility and services.

Alternative budget-cutting methods have come forth from many sources — ranging from the National Governors' Association to the State of Michigan (see p. 2). But meanwhile many of the state cuts not only are hurting the poor, but probably will cost the states more in the long run.

A case in point is Mississippi, which was planning to drop prescription drugs until a supplemental appropriation bailed out the state program. Said Mississippi Legal Services' Gloria Raves of the drugs' purpose: "It's not like they're extra — like you can go to the store and get Bufferin. If they don't get these drugs, they're going to have to go into the hospital. And someone's going to have to pay for it." Limited cuts in drugs are under way in Illinois, Iowa, Pennsylvania, Tennessee, Missouri and Wisconsin.

One big reason for the cuts is soaring Medicaid budgets. Tennessee's Medicaid budget will rise from \$420 million this year to \$500 million next year. Washington's was \$545 million for

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Three hundred people protested in Los Angeles as the Board of Supervisors there cut back immigrant health care. (p. 5)

Opposition to Cuts Takes Shape

Bolstered by polls showing broad support for close Congressional scrutiny of budget cuts, a new coalition of about 80 organizations is considering a National Day of Action for May 9, with coordinated activities at the local level. Meanwhile several sets of alternative cuts have been proposed by a variety of groups.

Spearheaded by the National Anti-Hunger Coalition (800-424-7292), the coalition ranges from the Steel Workers Union to

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eyeglasses and dental care, reducing doctor visits to two per month, and cutting hospital days to 26 per year. U.S. District Judge Bruce Jenkins overturned the cuts both on procedural grounds — the state hadn't plainly informed the recipients of what the cuts meant and of their right to appeal — and on substantive grounds: the limit on doctors' visits, for example, would unfairly hurt those with more serious diseases which need more care. (*Compos v. Mitchell*, D. Utah, Cen. Div. #C79-0275). While clearly proud of the advocates' success, attorney Lucy Billings of Legal Services worries about the state's future. "I don't know if we're going to live up to our name. There are going to be more cuts."

That uncertainty seems to be the theme in many states. Advocates in Tennessee managed to get the courts to enjoin a \$42 million cut last August, but state Medicaid administrators came back in February with a \$90 million cutback proposal. West Virginia cutbacks were stopped last year on procedural grounds, but then the state had the case continued while the technicalities (consultation with the Medical Care Advisory Board) were fulfilled. And in March of 1981 the courts said the corrected cuts could go forward.

Poor people and their advocates have also held back damaging health cuts at the legislative level. Mississippi was planning to eliminate outpatient drugs from its Medicaid program until clients began to voice their opposition to legislators and at a

Despite ups and downs, poor people's advocates have won a surprising number of victories

well-attended public hearing in Jackson in December. Doctors opposed the drug cuts along with cuts in doctor visits. In February, the legislature passed a \$64 million supplemental appropriation which among other things stopped the drug cuts.

Said Legal Services' Gloria Graves, "I think it was because clients really got out and called. It was clients calling up and saying, 'I live in Jamestown and I get Medicaid. How am I going to pay for drugs?' As a result, poor people in Mississippi continue to get heart pills, insulin, oral diabetes pills and other necessary drugs."

Poor people's advocates in Washington State are working on an administrative level to convince state officials to relent in their plans to cut over 10% of the state's 14,000 chore service homemakers. Advocates are pointing out that the homemakers, who do housework and shopping for elderly people living at home, actually save the state money. The program causes an estimated 20% immediate drop in nursing home admissions, since it allows the elderly to continue to live at home.

Advocates readily acknowledge that winning a lawsuit is not always the clear victory it seems to be at first. "If we sue and we're successful, they might do worse things," says Peter Martin of Legal Services in Maryland. "We're sort of playing Russian roulette," says Washington's Debbie Maranville. Nevertheless, despite constantly shifting political currents, advocates generally agree they must use whatever tools they have to protect their clients' health.

While advocates search for alternative budget cuts (see p. 2), others seek to hold the line on health-threatening cutbacks — whether by administrative, litigative or legislative work. Meanwhile, most of them are crossing their fingers and hoping for no further cuts. As Mississippi's Gloria Graves said, "Maybe they won't mess with us since we've got so little."

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Opposition continued

the Urban Coalition to Rural America. The May 9 protest over cuts in social services follows a week of activity which took place April 15-22, when individual constituents and community organizations met with their Congresspeople who were back in their districts for Easter recess.

A *Los Angeles Times* poll conducted in March found that 63% of the public wants Congress to take its time in considering Reagan's proposed budget cuts. Only 33% oppose such a careful deliberation. This sentiment could mean trouble for Reagan's cut proposals, which have sailed through the Republican Senate but which must now face the Democratic-controlled House of Representatives.

New ammunition for alternative budget cuts was provided by the Children's Defense Fund, which targeted 18 areas in which cuts totaling \$18.4 billion could be made. Among the cuts suggested by the Washington, D.C.-based group: eliminating a loophole in the capital gains tax (savings: \$5.4 billion), cutting the special tax treatment for oil exploration costs and oil depreciation allowances (savings: \$2.4 billion), ending the favorable tax treatment of the "dummy" Domestic International Sales Corporations (savings: \$1.8 billion).

Thirty-three organizations in February joined together to oppose the Medicaid cap, calling the Medicaid program "an essential component of our 'social safety net.'" Among the signers of the statement were the International Association of Machinists, the U.S. Conference of Mayors, the National Association of Counties, the National Urban coalition and NHELP.

The Congressional Black Caucus, refusing to compromise on social programs, not only called for retaining all such programs, but also proposed a \$25 billion increase in social spending to be financed by a \$27 billion tax increase, much of it to be shouldered by big business. On the defense budget, the Black Caucus proposes to spend \$5.1 billion less than the President.

A budget drafted by House Democrats on the Congressional Joint Economic Committee would repeal many tax preferences, double federal taxes on liquor and cigarettes and raise federal taxes on gasoline and diesel fuel to 14 cents a gallon from the current 4 cents a gallon.

Another alternative Congressional budget, proposed by the so-called "Gang of Four" (Leon Panetta and Norman Mineta of California, Timothy Wirth of Colorado and Richard Gephardt of Missouri), would go along with up to \$25 billion worth of Reagan's cuts, but would salvage some programs under attack by offering other cuts.

The plan by the four Democrats on the House Budget committee would cancel Reagan's proposed cuts in such items as Medicaid, nutrition programs and some subsidized school lunches. They place great emphasis on eliminating waste and abuse in federal spending, and on more aggressive collection of tax revenues owed the federal government. Such measures could bring in \$6-10 billion during the next fiscal year, estimates say.

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Photographers Wanted for Newsletter

The *Health Advocate* needs free-lance photographers who can cover — and uncover — stories about the health needs of poor people. Contact Geoffrey Brown at the National Health Law Program, 2639 S. La Cienega Blvd., Los Angeles, California 90034. (213) 204-6010.

North Carolina continued

lan, "causes and threatens irreparable harm to a large number of black and poor people for the protection of whom, among others, the certificate of need program was adopted."

Before its partial closure, Charlotte Community Hospital provided acute nursing care, detoxification services and a special "stroke" unit for persons suffering from strokes. Located "on the wrong side of the tracks," according to McMillan, the hospital has never been developed into a full-service hospital. By contrast, the three major general hospitals in Charlotte are in established white neighborhoods about two miles east of the formerly all-black (and still mostly black) hospital.

The standing order of the District court is that the defendants must seek a Certificate-of-Need before proceeding further, but the defendants are appealing the merits of the case to the Fourth Circuit. Patients in the threatened hospital closure are represented by Julius Chambers and the NAACP Legal Defense Fund. The National Health Law Program has prepared a friend-of-the-court brief on behalf of the Baltimore Welfare Rights Organization defending the health planning process and its help for the poor. The brief says that the poor people of Baltimore, which is also in the Fourth Circuit, have a vital interest in the continuation of a strong health planning program recognizing the needs of the inner-city poor. (*Heath v. Charlotte-Mecklenburg Hospital Authority*, W. Dist. N.C., C.C-81-193, June 22, 1981.)

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Facing an uncertain future—One of the younger participants at recent Louisiana meeting on the effect of budget cuts.

Forums on Cuts Educate Louisianans

In a series of public forums in Louisiana, poor and middle-class people have been informed about the effect of federal budget cuts. Audiences ranging from a dozen to a hundred have heard talks by community and state representatives at forums in Opelousas (photo), Lafayette, Franklin and New Iberia. Addressing the gatherings were officials from school districts, the welfare department, mental health centers, elderly and blind services, Community Action Program, and Legal Services.

The audiences' reaction? "They're really surprised," said Gary Sells of Arcadiana Legal Services, which helped organize the forums. "They just didn't know what's going on. The newspapers around here are real bad." More forums are planned to fill the information gap on the budget cuts' effects.

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Hill-Burton

Appeals Court Nixes Poor's Entitlement to Care

In 1978, *Newsom v. Vanderbilt University*, 453 F. Supp. 401 (M.D. Tenn., 1978) held that poor persons had an enforceable property right to uncompensated care which was protected by due process. On appeal, the Sixth Circuit reversed, holding that there is no individual entitlement under the pre-1979 regulations. *Newsom v. Vanderbilt University*, ___ F.2d ___ (6th Cir. decided June 2, 1981). The court did agree, however, that plaintiffs had been correctly granted a trial de novo and that the agency's administrative decision, which found Vanderbilt in substantial compliance, was not binding on the District Court. And the court did not disturb the District Court's holding requiring deficit make-up, as far back as 1973, if Vanderbilt could not demonstrate its compliance with the applicable requirements.

Critical to the Sixth Circuit's ruling of no entitlement was one fact—Vanderbilt had chosen the 10% compliance option, an annual requirement that was far less than the total need for uncompensated care in the hospital's area. Because not all eligible persons could legitimately expect uncompensated care, the court repeatedly stressed, no member of that class had any right to free services. The Sixth Circuit reached this result by maintaining that, at the time of the District Court's decision in 1978, the hospital had sole discretion to decide which individuals would benefit and receive uncompensated care, as long as the hospital provided the required amount each year.

Unquestionably, the Sixth Circuit's decision is a major setback for low-income consumers. Better "facts" exist, but it will be a major undertaking for any subsequent case to develop the factual record as thoroughly as did the *Newsom* plaintiffs. Had Vanderbilt been an "open-door" facility rather than a 10%, the entitlement issue might have been decided differently.

Between 1973 and 1979, roughly 70% of all Hill-Burton facilities chose the open-door option, 42 CFR 53.111(d) (2), instead of the 3 or 10% formulas. The open-door hospital was required to provide all eligible persons with uncompensated care throughout the year. The open-door was prohibited from imposing any limitations on the types and kinds of services to be provided, and could not restrictively allocate uncompensated care. And, the open-door had an affirmative obligation to identify every eligible patient, before services were rendered and regardless of a request, and could not passively remain ignorant of a person's inability to pay.

-Armin Freifeld

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Wilmington Hospital Relocation Upheld

The Third Circuit Court of Appeals en banc upheld a district court ruling which allowed the Wilmington Medical Center to shift many of its operations to a to-be-constructed suburban hospital, leaving behind what poor peoples' groups contended would be an inferior and racially identifiable inner-city hospital. The Appeals Tribunal rejected arguments by the NAACP and others that the inner-city minorities, elderly persons and the handicapped would be discriminated against by the move.

The Wilmington Medical Center, by virtue of the June 29 decision, will be able to proceed with its Plan Omega, under which two of its three inner-city hospitals would be closed and the third one would be renovated. This would reduce the downtown bed count from 1,104 to 250. A new 780-bed facility will be built in suburban Stanton, located 9 1/4 miles southwest of the downtown facility. Of the 33 inpatient departments, 5 will be housed exclusively at the remaining downtown hospital, while 15 will operate exclusively out of the suburban location. Another 13 will be split between the two.

The majority judges relied heavily upon an agreement worked out between the medical center and HEW (now HHS) after that federal agency found discriminatory effects in the plan. To satisfy HEW, Wilmington Medical Center (WMC) agreed to provide shuttle bus service to the suburban site (since no public transportation is available), to renovate the downtown hospital, to prevent racial identifiability of either location, and to operate the two facilities under the same administrative body. The majority judges found the remaining objections to the plan to be insignificant.

But the dissenting judge (Gibbons) argued that WMC's ability to carry out its promises to HEW hinged on the financial feasibility of the whole project—about which, he felt, the plaintiffs raised serious doubts. The probable result, he opined, was that the suburban facility would be built, and then WMC would wring its hands and find there was no longer enough money left for either the downtown facility's renovation or for adequate shuttle service to the suburban hospital.

The plaintiffs challenging WMC had also charged that the shuttle service, ending each day at 7 p.m., would prevent visitors from seeing their children in the evening, and that the extra ride from the downtown hospital to the suburban one would deter many from seeking care. The majority judges did not agree, however, and Plan Omega after a five-year battle was finally allowed to proceed.

The one redeeming feature of the majority opinion was that the court upheld the validity of federal regulations prohibiting practices which have the "effect" of discriminating against protected groups.

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New Hampshire Rally

Missing from the *Health Advocate's* accounts of anti-cuts activity was a May 7 rally in New Hampshire which attracted 1,500 people—one of the largest turnouts on the issue. On June 11, petitions with 10,000 signatures were presented to state leaders by the rally's organizers, who have formed a coalition entitled People First to fight services cuts.

AFL-CIO Plans Huge Washington Rally

For the first time in decades, the AFL-CIO is urging its members to join a massive-scale demonstration. The labor federation announced plans for a September 19 rally in Washington, D.C. to protest cuts in the federal budget.

The planned march marks a significant break with tradition. The AFL-CIO refused to join in the 1963 March on Washington sponsored by civil rights organizations. The late AFL-CIO President George Meany believed mass marches were too radical.

But his successor, Lane J. Kirkland, said that "changing times call for changing tactics." The Sept. 19 Solidarity Day rally is being sponsored by the central labor federation in cooperation with 180 other organizations because the Reagan programs "hurt every worker in America," said Thomas Donahue, AFL-CIO secretary-treasurer.

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Atlanta Hospital Drops "Cash-Up-Front" Demand

Atlanta's Grady Memorial Hospital agreed in April to drop demands for pre-payment by low-income patients. The policy shift came after four years of litigious maneuvers in *Cloud v. Regenstein*, in which ten poor people led by Inez Cloud had contended that the hospital was violating its Hill-Burton community service obligation and civil rights laws by turning down patients who didn't have the necessary cash in their pockets—but would be able to pay their bills on an installment basis over time. An April 14 consent decree wrapped up the settlement.

Since Georgia lacks a medically-needy Medicaid program, only the categorically-needy get Medicaid—leaving many poor people out in the cold. The hospital's pre-payments ranged from fifty cents to several hundred dollars, depending on the services, and effectively prevented many poor people from getting any care. Under the settlement, low-income people can set up payment schedules for their hospital bills that can let them carefully apportion their incomes to avoid getting sunk by one big bill all at once.

Robert Regenstein, head of the Fulton-DeKalb Hospital Authority which runs Grady Hospital, was the defendant in the suit, which was handled by Deborah Ebel of Atlanta Legal Aid and John Zimring of Georgia Legal Services. (Civil Action #C77-599A.)

Patients could still be denied services, under the settlement, if their bill payments are overdue and they don't have the money for a pre-payment. But even under those circumstances, a long procedural review is still necessary and attorney Zimring feels the suit's outcome was quite favorable.

Grady Hospital had contended all along that they had no "informal" policy of never denying services, but they claimed to be reluctant to put it in writing. The plaintiffs, while agreeing that the hospital was trying in many cases, nevertheless reported instances of denials. In some cases, hospital personnel demanded every last bit of a patient's change—including busfare—so that often patients had to walk home. Under the recent settlement, such instances will be only a memory.

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Clinic Saved by Data Moles (p. 5)
Health Survives Budget Surgery (p. 2)

Health Advocate

Newsletter of the National Health Law Program

No. 124

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Several hundred members of the County Health Alliance showed up at the Los Angeles County Board of Supervisors' meeting on August 4 to hear state Assemblywoman Maxine Waters (right) call for lessening of the drastic health care cuts approved in July by the board's con-

servative majority, including Supervisor Peter F. Schabarum (left). But the board only restored \$1 million of the \$75 million it had cut, prompting continued protest by a coalition of labor, church and community groups.

\$75 Million in L.A. Health Cuts Ignite Feuds, Protests

Controversy and virulent exchanges have joined the smog in L.A.'s air since that County's conservative Board of Supervisors made \$75 million worth of health care cuts in early July. A prominent black state Assemblywoman called the Supervisors "conservative bastards." The budget-chopping Supervisors have tagged as "demagogues" the hundreds of protestors who have attended recent Supervisors' meetings since the cuts. And the protestors have hooted back that the conservatives are "racists." Even the well-heeled *Los Angeles Times* suggested the Supervisors were "playing semantic games" by circumventing a state law requiring hearings before health cuts can be implemented.

Igniting the controversy were cuts that have closed eight county health clinics, eliminated 400,000 yearly walk-in visits at 32 other clinics, and chopped the level of service at three of the county's major hospitals by 10%. Additionally, 1.5 million prescriptions a year will not be dispensed as a result of closure of outpatient pharmacy services at hospitals and clinics. Nearly all medical social workers and programs have been wiped out, includ-

ing the Child Abuse Referral Team, the Emergency Family Aid Referral and the Sudden Infant Death Syndrome Counseling. Nutritionists, transportation and health education were also eliminated or cut drastically.

Dental clinics, which provide the only source of care for many poor people, including children who need orthodontia (which is not covered by Medi-Cal), were closed. These clinic closures were part of the hospital cuts.

All county hospitals are affected, but the cuts fell particularly hard on the two inner-city hospitals, County-USC and King. This galvanized state Assemblywoman Maxine Waters, in whose district is Martin Luther King Hospital, and who had just fought hard in the legislature for an extra \$5 million for L.A. County. After calling the Supervisors "conservative bastards," Waters came to the Supervisors several weeks later with peace offerings—a pledge to urge the county's legislative delegation to fight for more state funds for the county's health needs. The same day, in the spirit of conciliation, the Supervisors approved nearly \$1 million in newly-found county funds to help patch up the damage of the earlier cuts.

"At least it's a start," said liberal Supervisor Kenneth Hahn, but conceded it alone will not be enough to "end the unrest." Indeed protests have been large and frequent since the cuts were announced. Up to 800 protestors have picketed outside the Supervisors' building in downtown Los Angeles, and in mid-August a coalition of church, labor and community leaders

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Coalitions for the Hard Times Ahead

Around the country, advocacy groups are banding together to share resources, strategy, and morale-building in the face of harder and harder times. People who've worked in health, housing, welfare rights, food policy, and neighborhood protection and planning now regularly ask one another's help in promoting legislation, defending programs, and confronting powerful institutions.

In August, NHeLP convened eight regional conferences, bringing together about 450 advocates. Because the world of health is itself so diverse, the outreach was directed primarily at health advocates. Groups represented included: community clinic administrators, the Gray Panthers and other advocacy

groups for the elderly, midwives associations, unions whose members serve the poor, Legal Services paralegals, clients, attorneys, nurse practitioners, patient advocates, health planners, welfare rights organizers, nursing home ombudsmen, federal health administrators, legislative staffers, and such organizations as the Alabama Anti-Hunger Coalition, the South West Texas Consumer Alliance, the Louisiana Black Farmworker Association, Citizens for Tax Justice, the American Medical Students Association, the Economic Development Law Center, and the National Senior Citizens Law Center.

Highlights of the conferences included an analysis by UCLA Public Health Professor William Shonick of Health Reagonomics; a description of advocates' efforts to fight Prime Minister Thatcher's health cutbacks in England, Denver advocates' struggles to maintain primary care in their public hospital, Utah's success in maintaining a viable mental health system, the saga of West Virginia's rescue of its medically needy program, Kentucky advocates' success in fighting Medicaid cut-



A-SHIRT YOURSELF: WEAR YOUR CONVICTIONS.

NHeLP T-shirts are now available in the two designs shown. HEALTH CUTS MAKE ME SICK is green on a yellow shirt; BACK TO THE MIDDLE AGES is black on a red shirt. Men's sizes S, M, L, XL. Send \$8.00 per shirt to NHeLP's Los Angeles office. (Price includes postage.)

HEALTH CUTS MAKE ME SICK

☐ S ☐ M ☐ L ☐ XL

BACK TO THE MIDDLE AGES

☐ S ☐ M ☐ L ☐ XL

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National Health Law Program
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Special Double Issue

Health Advocate

Newsletter of the National Health Law Program No. 128-129 Jan.-Feb. 1982

Is This Your Last Newsletter? See P. 7

Dear Health Advocate Reader:

The *Health Law Newsletter* and its successor the *Health Advocate* have kept you informed about poverty law developments in health for eleven years. We started with a readership of 100 and now reach nearly 5000.

It is difficult, I know, to receive free educational materials over time and then suddenly be asked to pay for them. Most of you have not paid—not because you're indifferent to our plight but because of the sheer inconvenience of it all and a human reluctance to change the way you've always gotten our newsletter. We've understood that and to date have not cut anyone off for nonpayment. Unfortunately, we cannot continue this arrangement.

You've read in our newsletter and in your own newspapers about the difficult times all programs funded by the Legal Services Corporation (LSC) now face. Local programs will be cut by at least 25%. Back-up centers, including NHELP, will be cut that much and may be eliminated altogether by the new LSC Board. Many programs are considering dropping their newsletters to

save money. NHELP is not. We know you consider communication with health advocates about recent legislative, judicial, and regulatory developments in health to be one of our most important responsibilities. In this newsletter you can receive and impart information on a national and local basis. Knowledge is power, and we therefore plan to continue our newsletter as long as we exist as a program. We need your help to keep the vital and unduplicated work of this newsletter alive.

We regret to announce that this will be the last free issue of the *Health Advocate* for non-LSC subscribers. We ask LSC workers to subscribe too, on a voluntary basis. All subscriptions are tax-deductible, so mail your subscription check in today.

For those of you who can, we ask you to send more—\$25, \$50, \$100. Your contribution brings you the analysis you need to fight effectively for health care for the poor.

Sincerely,
Sylvia Drew Ivis
Executive Director

Health Care in the '80's What's Ahead for the Poor

As a new and very uncertain year begins, the staff of NHELP decided to explore with you directions and trends in poor people's health care. We believe possibilities exist for effective advocacy in a hostile climate. While the number and variety of attacks on poor people's health care is disconcerting, we do not believe that government will allow complete destruction of the programs that have evolved during the past decades. Changing political and economic conditions, however, require us—advocates, beneficiaries, and sympathizers—to rethink our objectives and our strategies. As conditions change, much of the highly specialized knowledge Legal Services has acquired will become obsolete. However, much of what we have learned goes beyond the details of laws and regulations to include the needs and problems of the poor, the nature of the health system, and the policy implications of new proposals. This rethinking will be an extended, ongoing process. It is our hope that this newsletter can set off a dialogue within the Legal Services community on the most effective ways to assist our clients in obtaining the health care they need.

In assessing the state of poor people's health resources, two premises quickly emerge. First, the context in which health advocates work has already changed dramatically and continues to change very rapidly. Second, the present Administration has begun what will be a long and very draining war on the poor.

For most of this century, national sentiment (at least as reflected in the votes of elected officials) has supported increased public involvement in provision of basic services. First sanitation programs, immunization and other clinics, and hospitals were created in recognition of a general public need. As those programs took hold, and as the largely-immigrant populations shifted out of slum housing and into the middle class, additional programs were implemented both to support the health care providers of the middle class and (through separate programs) to take care of the poor. By the time of the War on Poverty, organized special interest groups and an expanding economy provided the conditions necessary to institute Medicare and Medicaid. As late as the Carter Administration, health care advocates and many public officials still thought in terms of a slow but relentless move toward a national health insurance program. (The United States is the last western nation without one.) Public opinion polls showed enormous support for national health insurance, and health advocates debated the merits of competing proposals.

Since then, of course, things have changed. Instead of inching toward National Health Insurance, we appear to be running full tilt in the opposite direction. Privatization, by reducing the role of government in both funding and overseeing health care, pervades Administration proposals for change. This is reflected in a

Dateline Washington

Congress Fails to Stop Administration Juggernaut

Proceeding on a game plan already rejected by Congress, the Reagan Administration has issued regulations weakening the Medicaid law, ordered staffing cuts, and curtailed opportunities for public input in social program spending.

When Congress passed the Omnibus Reconciliation Act, which reconciles differences between budget bills passed by the Senate and those passed by the House of Representatives, some facets of the Administration's scheme for cutting back social programs did not make it into the law. For instance, the Administration wanted to shift nearly all existing categorical programs to Block Grant status, in which the states decide how to spend the total pot of money without any federal strings requiring certain amounts for certain programs. In an upset defeat for the Administration, Congress did shift some programs but rejected block grants for many of the categorical

Further encouragement to the states comes from DHHS Secretary Schweiker, who recently wrote to all the governors urging them to take the block grant funds immediately. Schweiker's letter indicated that the states would have complete unfettered control over use of the funds.

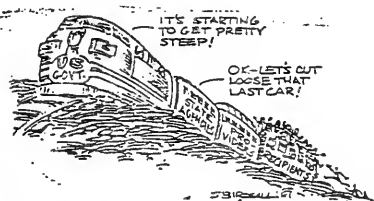
In general, communities and states must hold public hearings to gather input on how block grant money should be used. Since needs may differ from place to place, public input is a major source of practical information to help public officials understand the needs of program beneficiaries in their communities. In order to promote and streamline transfer of social programs from the federal government to the states, Secretary Schweiker has waived the public hearings requirement for this year. Health advocates are currently reviewing the question of whether Secretary Schweiker really has the authority to waive the public hearing requirement, and litigation is under consideration.

Other tactics have also surfaced, including subtle cues in newly issued regulations that the Administration will approve lower levels of coverage than the Reconciliation Act seems to contemplate and Administration pressure on Congress to reduce total funding even more.

Until the passage of the Reconciliation Act, the Medicaid law required two kinds of comparability between the categorically needy and the medically needy. (Categorically needy people are eligible for welfare—and thus Medicaid—because their incomes are low enough and because they meet certain categorical criteria such as being a family with dependent children. Medically needy people are people who meet the same categorical criteria—are "categorically linked"—but have slightly higher incomes than the categorically needy.) Previously, states were required to offer the same package of services to medically needy as were offered to the categorically needy. States were also required to use the same criteria (except for income) to determine eligibility. In this year's Reconciliation Act, Congress repealed comparability for services and selection of groups to be included in the medically needy program. It also repealed the requirement of a basic package of services for the medically needy, so states are no longer required to offer a particular package but may choose groups to be included in the medically needy program and also what they will get by being included. States are supposed to exercise their new latitude "flexibly" and "appropriately to meet the needs of different population groups." Although this is a great enough leap backward, Congress did emphasize in the Conference Committee report that the comparability requirement of 42 U.S.C. §1396(a)(17) was not repealed: "Moreover, it is not the intent of the conferees to alter the requirements under section 1902 (a) (17) of the Social Security Act relating to comparable treatment of income and resources between the categorically needy and medically needy programs." 1981 Congressional Record H-5813, H-5804, July 31, 1981 (Remarks of Reps. Dingell, Waxman). Statements in the Report can be quite important because after looking at the language of the actual laws, courts often look to "legislative intent" in interpreting the law.

Despite the statement in the Conference Committee's Report, the newly issued regulations suggest that comparable

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programs most important for the poor. Congress also allowed, for those programs that were shifted to block grants, a full fiscal year for transition. States could either take over the programs immediately or could gear up first and then take over.

The Administration is not taking Congress' rejection lying down. Internal directives and communications to the states indicate that the Administration has decided to move ahead as if its entire original proposal had in fact been enacted by Congress.

First, the White House has ordered the Department of Health and Human Services (DHHS) to behave as if all programs were shifted to block grants and the states had decided to take over all the block grant programs immediately. Thus DHHS is to begin implementing "reduction in force" plans even where the programs remain categorical and where states may pick up the programs but have not yet done so. This staff reduction, planned for the end of October, will reduce personnel in some programs to the point that program requirements cannot be effectively enforced.

Second, the brass at DHHS is leaning on the states to exercise their block grant options immediately instead of waiting until they are organized to handle the programs themselves. At a series of regional meetings, DHHS representatives have been explaining to state officials that the block grant money is just sitting there waiting for them to use in whatever way they see fit. To allay any concern about federal officials reviewing how the states spend the money, these same officials have assured the states that no evaluation is planned.

Firm too busy to rent HUD units, court told

Federally owned Northside apartments, whether they were in good condition or bad, were boarded up while more than 100 people were in waiting lists for the units.

Sharon Hall, of Lable and Co. Management, testified in federal court yesterday that some tenants' unsacked units and left them without plumbing, kitchen cabinets and windows.

But she also told of cases in which the apartments were left in good condition and little more than painting would have been necessary to rent them again.

Lable and Co. manages the 333 Northside units owned by the federal Department of Housing and Urban Development.

For more than a year, beginning June 1981, all HUD units were boarded up when the tenants vacated them.

Northside residents last month asked the court to order HUD to lease the vacant units, contending that by not doing so HUD was neglecting its duty to provide housing for low-income people.

In a preliminary order, U.S. Dis-

trict Judge Alan N. Bloch told HUD to fix 10 of the vacant units and rent them.

The hearing, which is to continue today, was to determine if that order should be extended.

Hall said in an interview earlier this week that Lable and Co. had repaired all 10, rented one, and was contacting prospective tenants for the others.

When she testified yesterday that good apartments were boarded up because the company was too busy to paint and rent them, Bloch shook

his head. "You say you were busy with other things. I can't understand that. What would you have to do to rent it, [besides] go down the [waiting] list?"

HUD pays Lable more than \$26,000 a year plus 3 percent of the rent received to manage and handle routine repairs at the Northside properties. HUD also covers some of Lable's management costs and pays for all major repairs.

When the Neighborhood Legal Services Association filed the action for the Northside residents, about a third of HUD's units in houses, du-

plexes and apartment buildings scattered across the Northside were vacant. More than 6,000 people are on waiting lists for low-income housing in Pittsburgh.

HUD directed its area offices in November 1981 to stop making major repairs at its apartments. The projects were to be sold as quickly as possible to buyers who would do renovation work.

While the projects were being sold, however, the area HUD offices were directed to have maintenance work done and to make emergency repairs.

Area

HUD: Demand isn't pressing for apartments on Northside

By Barbara White Stack

Post-Gazette Staff Writer

There is no pressing demand for 10 federally owned Northside apartments recently repaired under a court order, according to the lawyer representing the U.S. Department of Housing and Urban Development.

Sharon Hall of Lable and Co. Management, which manages the apartments for HUD, testified in U.S. District Court yesterday that she had contacted 10 people on the emergency waiting list for the apartments.

Three families have moved in or are about to. Two others expressed interest, but have not called back, two had found other apartments, two no longer qualify and one was no longer interested.

The hearing is on a request by prospective tenants for a court order to HUD to repair and rent the 100 vacant apartments in the Northside project.

In a preliminary order, Judge Alan N. Bloch told HUD to fix and lease 10 of the vacant apartments.

The Neighborhood Legal Services Association has maintained that all the vacant units should be fixed and rented because there is a pressing demand for public housing in Pittsburgh, and HUD has agreed that there is a need for public housing.

Yesterday's testimony was aimed at disputing that need.

HUD also submitted photographs of the Northside apartments showing damaged bathrooms and kitchens stripped of fixtures.

HUD realty specialist George Hudanick admitted, however, that the company hired to manage the apartments had removed some of the fixtures in vacant apartments to repair occupied units.

The pictures of the apartments and earlier testimony about the condition of vacant apartments were produced by HUD to show that tenants and prospective tenants have no right to demand that vacant apartments be repaired and rented.

In May and June of 1981, the HUD units were inspected by code enforcement agencies and 2,300 vio-

lations were found. The parts were moved from the vacant apartments to the occupied apartments to correct those violations, Hudanick said.

It also was done "because there was no indication that we would [repair and rent] the vacant units in the near future," he said.

Testifying further on her recent efforts to rent the newly repaired units, Hall said she also contacted nine people on the non-emergency waiting list.

One said she was interested but

has not filled out the required forms. Five said they no longer want the HUD apartments, Hall said, she wrote to three people whose phones were disconnected, and received no responses.

Some of the applications are at least two years old, Hall admitted under questioning.

Hall said she made no attempt to contact other agencies, such as the city Housing Authority, that have waiting lists containing thousands of names of people interested in public housing units.

Woodland Hills Plan Blasted By Millions

By MARY STOLBERG

Jake Millions today said a desegregation plan submitted by the Woodland Hills School District would institutionalize, rather than alleviate racial problems.

"Really, it's one of the worst plans I've ever seen," said Millions, who is a member of the Pittsburgh School Board and a psychology professor at the University of Pittsburgh.

Millions was called as an expert witness by Neighborhood Legal Services to testify before U.S. District Judge Gerald Weber.

Last spring, Weber created the district when he ordered the merger of the mostly white schools in Edge-

wood, Churchill, Turtle Creek and Swissvale with the mostly black schools in General Braddock.

Weber ordered that the secondary grades be desegregated by this year, but gave Woodland Hills until next year to complete its plans for elementary students.

The plan is currently the topic of the hearings.

Millions attacked the district's proposal because he said it calls for the closing of schools in the black neighborhoods and the busing of their students to primarily white schools.

By placing most of the burden on blacks, Millions said the plan was telling them they were inferior and nothing good could happen in their community.

Millions said the Woodland Hills plan for "the most part accommodates white youngsters and the white community at the expense of black youngsters and the black community" and that will cause problems for the mental health of both groups.

He said that the black children will get the message that they are inferior and white children will keep an attitude that they're superior.

~~3-9-82 Press~~

JAKE MILLIONES (ORGANIZER OF PITTSBURGHERS
AGAINST APARTHEID)

NEIGHBORHOOD LEGAL SERVICES

Attorney Disputes HUD Housing Sale

By MARY STOLBERG

An attorney for low-income city residents trying to get into housing is expected to call a witness today who will testify that despite its claims, the U.S. Department of Housing and Urban Development is not ready to sell units it owns on the North Side to a private developer.

Neighborhood Legal Services attorney Donald Driscoll said he believes HUD has not taken all the necessary steps to put the approximately 300 units scattered throughout the North Side on the market.

HUD officials say the bid package which will go out to developers is ready now. But they say they are waiting to see what action U.S. District Judge Alan Bloch will take.

Bloch has been presiding over the case since it was filed by NLS last year to protest HUD's alleged inaction in keeping its units repaired and rentable.

HUD has said it doesn't want to spend the \$5 million it would cost to repair the units because it plans to

turn them over to a private developer who will have to make the repairs.

During testimony yesterday, HUD employee George Hudanick discussed pictures he had taken recently of some of the boarded-up units. He said many are filled with debris and lack needed plumbing and electrical equipment.

Hudanick said some of the toilets and other necessary items had been taken out of the vacant units and put in apartments and town houses currently rented to bring them up to county and city health and building standards.

Another witness, Sharon Hall, who manages the units, said she had trouble finding tenants to rent 10 units that Bloch ordered HUD to repair last month.

Miss Hall said many of the people she contacted from an emergency waiting list said they were no longer interested in the units or else promised to move in with the necessary welfare documents and then never showed up.

Justice questions squatter evictions

A district justice in Homewood-Brushton said yesterday that he may allow two squatter families to re-occupy city-owned homes there unless the city can show it followed proper procedures in evictions last week without notice to the squatters.

District Justice Dennis Schatzman said he will send a letter today, asking the city to respond within 10 days. He said the city may be subject to civil or criminal action if it did not act properly.

The city solicitor maintains that the squatters were trespassing on city-owned property, but Schatzman contends that proper notice of eviction still must be given.

8-12-82 News

4-19-86 PG

North Side Deal Possible, HUD Says

By MARY STOLBERG

An official of the U.S. Department of Housing and Urban Development thinks a developer can be found to take over low-income housing units on the North Side for about \$5.2 million.

Marvin Hilman, director of property disposition for HUD, made his remarks yesterday as a hearing continued in federal court on the fate of the units, which are scattered throughout the North Side.

Neighborhood Legal Services wants U.S. District Judge Alan Bloch to order HUD to repair about 100 of the 331 units which are vacant because they are in bad shape.

But HUD has said it doesn't want to make major repairs because it plans to turn the properties over to a developer. HUD officials say it would cost about \$5.2 million to fix up the units.

Under HUD's plan, Hilman said, a developer would put \$10,000 down and would have 30 days to show he has enough financial backing to make the needed fixes.

He then would have to make repairs and reopen the housing for low-income residents. To make the deal more enticing, HUD has offered to pay rent subsidies on all the units.

In earlier testimony Hilman said HUD is losing so much money it wants to get rid of all the properties like the North Side sites it has acquired through mortgage foreclosures.

Although the sites haven't been put on the market yet, Hilman said

he was optimistic "some reasonable investor" will buy them. "Of course, it's always just a guessing game," he added.

NLS attorney Donald Driscoll tried to show by his cross-examination that Hilman's optimism is somewhat unfounded. He pointed out that HUD has not sold many scattered site projects and investors may find a more enticing tax shelter in some other arena.

Driscoll also asked Hilman what effect making the repairs would have on HUD's current proposal to sell the property. Hilman said if HUD did put out money for repairs, it might mean the whole package would have to be reworked. That could result in a postponement of the sale, which is supposed to occur soon.

The government also presented evidence from Sharon Hall, who has been hired to manage the properties. She said many of the units are vacant because it would cost so much to repair them.

She said many of the tenants, who skipped out owing thousands of dollars in back rent, tore out windows and their frames, stole refrigerators, and ripped out plumbing, kitchen cabinets and, in a few cases, kitchen sinks.

Miss Hall said her maintenance crew is so busy trying to repair units that are open, it doesn't have enough time to make even minor repairs in the vacant units.

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A-4 Pittsburgh Press, Fri., Aug. 13, 1982

Rental Cooperative For N. Side Backed

By MARY STOLBERG

A consultant has said the only viable plan for federally owned low-income housing units on the North Side would be to convert them into a tenant-owned cooperative.

Robert Totaro, a housing consultant from suburban Philadelphia, made his remarks yesterday as a hearing before U.S. District Judge Alan Bloch concluded.

Now it is up to Bloch to decide whether to order the U.S. Department of Housing and Urban Development to repair the 333 units, scattered throughout the North Side.

That's the solution requested by Neighborhood Legal Services, which brought suit against HUD last year to protest the agency's failure to keep the units repaired and rented.

NLS Attorney Donald Driscoll said the latest available figures indicate that about 100 of the units are vacant, even though HUD admits there is a dire need for low-income housing in the city.

HUD claims it shouldn't be forced to make the repairs, which it estimates will cost more than \$5 million. Instead, the agency wants to turn the housing over to a private developer who will make the repairs and then rent out the units.

Totaro, who was asked to testify by Driscoll, said he didn't think a private developer would be able to

overcome the problems which have plagued the units since they were opened in the early 1970s.

Some of those problems included high vacancy, severe rent delinquency, damage and ransacking by tenants as they moved out, and vandalism by others in the neighborhood.

Totaro said if tenants had an economic interest in their units and a voice in the way they were run through a cooperative tenants council, then some of those problems could be alleviated.

He said he had discussed taking over 180 of the units with interested and prospective tenants and they were enthusiastic. He also said for the plan to work, HUD would have to come up with some sort of rent aid, help finance the needed repairs and probably have to insure the mortgage.

Totaro made no recommendation as to what should happen with the remaining 153 units.

Totaro said he also based his advocacy of tenant ownership on his prediction HUD will not be able to find any developers interested in taking over the units.

HUD has put together a package under which a developer would have to put down \$10,000 and come up with a \$5 million letter of credit showing he can complete the repairs within 16 months.

After the repairs are made, the developer would have to reopen the units and rent them to low-income tenants. In exchange, HUD would pay rent subsidies, which include extra money to help the developer pay off the loan for repairs.

Bloch gave no indication when he will hand down his ruling.



BLOCH

The CHAIRMAN. Our next two witnesses will be F. William McCalpin and we will call Mr. Olson at the same time so that they can both make up a panel. We will start with you, Mr. McCalpin. I have to step out for a couple of minutes to say hello to Mr. Kennedy, and I will be right back. Senator Eagleton will take testimony until I get here.

Senator EAGLETON. Mr. McCalpin, we welcome you, and you may proceed.

STATEMENT OF F. WM. McCALPIN, ATTORNEY, ST. LOUIS, MO.

Mr. McCALPIN. Thank you very much. It is my understanding that in view of the lateness of the hour, the written statement which I have will be incorporated in the record, and it seemed to me that I might touch upon several matters of interest as relayed to me in a letter which I received from Senator Hatch, dated April 29. So I will skip through my statement and touch particularly on a few of those items.

Senator EAGLETON. Very good. Your statement will appear in the record in full at the conclusion of your testimony.

Would you please identify what your connection once was with respect to the Legal Services Corporation?

Mr. McCALPIN. Senator, for the record, my name is F. William McCalpin. I am engaged in the private practice of law in St. Louis, Mo., with the firm of Lewis, Rice, Tucker, Allen & Chubb. Since 1964, I have been involved with a number of entities and enterprises in the field of providing legal services to the poor. I was a charter member of the Legal Services Advisory Committee of the OEO program. Subsequently, I was Chairman of the Board of the Legal Services Corporation.

I am not here today as a representative of any of the entities or enterprises with which I have been associated in the past. I appear at the invitation of this committee solely as a private citizen, an interested lawyer, with some experience in the area which you are considering in this legislation.

Senator EAGLETON. For what period were you Chairman of the Corporation?

Mr. McCALPIN. I was Chairman of the Corporation from September 1980 until sometime in the afternoon of New Year's Eve 1981, when I was advised that my successors were holding a meeting of the Corporation.

Senator EAGLETON. And prior to being Chairman, you were on the Board?

Mr. McCALPIN. That is correct, Senator. I was confirmed as a member of the Board of the Corporation by the U.S. Senate in May 1979.

Senator EAGLETON. Your full statement will appear in the record as though read, and if you desire, you may proceed to the Hatch letter.

Mr. McCALPIN. Thank you. I would touch upon a few items only. In my judgment, the most serious problem affecting legal services for the poor and the Legal Services Corporation today is not one which can readily be solved by legislation. That problem is that the people with the greatest responsibility for providing legal services

to the poor at the national level, both within and without the Corporation, appear not to support the program but, indeed, to oppose it. What is needed now above all else is a national administration, a board of directors, and a staff who passionately believe in equal justice under law and who are firmly committed to the achievement of that objective through the Legal Services Corporation.

These times cry for people who believe in aggressive, imaginative advocacy for indigent clients—lawyers, paralegals, and support personnel—who will approach the evident problems of poor people with an open mind and who will bend their minds and hearts to the resolution of those problems for the good of their clients, for the administration of justice, and for the soul of this country.

We have been deeply gratified by the support which the Congress has given to the principle of equal justice and the Legal Services Corporation. To the extent that it has been called upon to do so, the judicial branch of Government has likewise rendered unswerving support. I am sorry that I cannot say the same for the executive branch, at least in recent years.

I would touch upon several items relating to the Board. Let me say first of all, I am familiar with section 2 of S. 1133, which has been introduced by you and others. I would recommend to you that you consider a specific requirement in section 2 of that act that a minimum of two members of the Board be eligible clients. We have gone through the semantics in the past of having an "s" on the end of clients, and the debate as to whether that meant more than one or not. I think it is time to put that at rest and make sure that there are at least two clients on the Board. In addition, I would suggest that you remove the first sentence of section 1004(d). That is the one which has raised confusion as to whether the President any longer has any right to appoint the Chairman of the Board. My reading of the act is that the President had that right in the first instance in 1974, but that he no longer has it, however the President has, in recent times, purported to exercise the authority to name the Chairman.

It had seemed self-evident that the President should nominate and the Senate confirm as Board members only those persons who are committed to the principle of equal justice and who are supportive of the Legal Services Corporation as a way to achieve that goal. Recent experience suggests that this principle is not as self-evident as had been believed. Therefore, I recommend it be incorporated in the act.

Again, in the people area, the single most important responsibility of the Board is to recruit and retain a competent staff. That staff must also be composed of people who believe in equal justice, who understand, will support, and can represent clients, irrespective of the forum or the nature of the problem.

One of the questions which Senator Hatch's letter raises is whether the Legal Services Corporation is a manageable enterprise and whether it can be operated in an apolitical manner. Those questions deserve an answer. The answers are simply that the enterprise of which the Corporation is the apex can be and generally has been operated in an efficient and effective manner, but that by its very nature it probably always will be tinged by political controversy.

Unquestionably, the Corporation has been well-managed in a financial sense. To my knowledge, no other Government-funded program runs on 4 percent of its appropriation and expends 96 percent in providing service to the intended recipients. There have been no scandals of a financial nature of any kind attached to this program or to the 325 grantees in the field.

The Corporation also has been successful in enhancing and, in some areas, initiating the rule of law in landlord tenant relations, consumer practices, and welfare administration. No longer do poor people in this country look upon the law as something that is done to them instead of for them. For the past 18 years, the poor have gained a foothold, a stake, in the justice system, something that was neither apparent nor appreciated in the turbulent sixties and early seventies. The country, too, has gained a closer approach to the historic goal of establishing justice, which the Preamble to the Constitution puts just ahead of domestic tranquillity.

There is one area in which we have not been as successful as we would like. It is, perhaps, in not informing and educating the public, and especially our critics, in what we have been about. We have, I am afraid, been so busy perfecting the organization of this entity which is not yet 8 years old and in spreading its services to every county in the country that we have not taken time to reiterate and explain the reason for a system of laws, the necessity and meaning of justice, equal justice, and the role of lawyers, courts, and legislative and administrative bodies in administering a system of justice.

We assumed a better public understanding about these things than apparently was warranted. In particular, on reflection, I believe that we did not listen carefully enough to the complaints of well-intentioned critics, investigate their complaints fully and carefully enough, and patiently enough respond. Having said that, let me also say that there was no way we could ever respond satisfactorily enough to the complaints of those with a vested interest in denying or abrogating the rights of poor people, and there were and are plenty of those.

The question of whether the Corporation and the movement it represents is political is inextricably entwined with the fact that poor peoples' problems lie not exclusively with or against other poor people. As long as Legal Services are confined to disputes with and between poor persons and families, no one gets exercised. When poor persons seek to enforce their rights against landlords, merchants, or other vested private interests, hackles begin to rise. That part of the local establishment turns to the public figures who appear to have made this assault possible or have suffered it to happen. When poor people seek to enforce their rights against public authorities directly, welfare departments, public housing authorities, school districts, or hospitals, the attack is viewed as political simply because the affected bodies are public.

The truth is that the poor historically have been denied basic rights by more affluent or powerful segments of the community. As a people, we responded in part through our elected representatives, the Congress and State legislatures, who created or explicated peoples' rights in legislation. Whether through opposition or inertia,

some people responsible for acknowledging or implementing those rights failed to do so.

The basic function of the legal services movement is to enforce those rights for poor persons. I believe that one of the great glories of our system of government is that having created or recognized those rights, we have provided a mechanism by which even the least powerful among us can secure those rights, even against government itself. That is both the political problem and the political promise of the legal services movement, and I think it will not go away.

Much has been said about class actions. I can think of no better illustration of the absolute, utter necessity for class actions than the case of *Thompson v. Walsh*, brought by legal aid agencies of St. Louis and Kansas City in the U.S. District Court in Kansas City. Welfare agencies in the State of Missouri were taking Federal funds but not processing claims within the 45 days required by Federal regulations. Hundreds of claimants were left waiting for longer periods of time while their claims dragged through the bureaucratic process. Many came to legal aid. Protracted negotiations with the welfare department availed nothing. A class action was filed.

It was necessary to file a class action because as often as one claimant filed suit, the welfare department conceded that suit and did nothing about the hundreds of others. As a result of that action, the Federal court in 1976 ordered the State of Missouri to comply with the Federal regulations. That should have been the end of the matter; it was not. More than 3 years later, the Missouri Welfare Department was still not complying with the Federal regulations or the court's order. Legal aid went back to court, moving for a contempt citation.

The district court's subsequent order, directed to the Department of HEW, was ultimately reversed on appeal. But it was not until after nearly 6 years of litigation, that the Missouri welfare officials finally bowed to the requirement that they provide welfare applicants in Missouri the benefits of the Federal program for which they accepted and used the funds. And bad as that is, it is even worse because actually in 1971, the eighth circuit, in *Light v. Carter*, 448 F.2d 798, had first reversed an order of the district court denying certification as a class action and, second, indicated that Missouri even then, 10 years before the final result, was out of compliance with the Federal regulations.

It makes absolutely no sense at all to handle a matter like that on anything other than a class action basis against the governmental authorities involved. The fact is that much of the litigation initiated by legal services programs involves the attempt to make governmental agencies responsible and accountable to poor people for programs enacted by the Congress and the legislatures of the several States. It would be a mockery of justice if poor people were to be given the hope afforded by these legislative programs only to have that hope turned to despair through disregard and contempt by the very agencies committed to the implementation of those programs and the inability of poor persons, through their advocates, to secure enforcement.

I recently saw a quote in our favorite newspaper, Senator, from Senator Leahy made in an entirely different context but which I think is peculiarly applicable to what I am talking about. Referring to the oversight activities of the Senate Select Committee on Intelligence, he said—and I think this applies to what we have been about in legal services, too:

We may or may not agree with the law, but if it is on the books, it is the duty of the Executive Branch to enforce it and it is the duty of Congress in its oversight function to make sure that it is being enforced. If we determine that a law is not to our liking, then it is also our privilege, perhaps, to change it.

That is exactly what the legal services movement has been doing. It has been exercising the right of poor people, as beneficiaries of legislation requiring equal justice. As long as those rights are on the books, I submit that poor people have a right to enforce the law, or our Government is a hollow mockery.

There is a tendency on the part of some to see such actions against government or private interest, particularly class actions, as some sort of a preconceived social agenda. I would digress here a moment to say, in partial response to some of the things Mr. Phillips said a few moments ago, that he simply does not understand who runs local legal services programs. If he thinks that the agenda of those programs is entirely dictated and controlled by the lawyers, then he has never been, as I have been, to the meetings of the boards of those programs and the priority-setting sessions of those boards when the poor people, articulate as they are, knowledgeable as they are, and as feeling as they are about their own interests, dictate and demand the kinds of actions which shall be taken.

I have participated in some of those debates at the local level and at the national level, and I can say to you that the decision to take on an action against the Missouri Welfare Department does not come from the lawyers in the program; it comes from the clients. These programs are accountable to the clients. These are not social agendas decided by the lawyers in the programs.

Turning to the act, I commend to you section 5(c) of your legislation, Senator, S. 1133, in which you would repeal a portion of section 1010(c) of the act, for the reasons I have stated in my remarks. It seems to me incomprehensible in this day and age, when legal services programs are being told to go out and raise their own funds privately, that the Congress of the United States should attempt to lay its hands on the use of those private funds raised locally for local purposes and dictate how they may or may not be used.

It seems to me that if you are going to shift a significant part of the funding obligation of these programs to the private sector, then you must release the hand of Government from the utilization and spending of those private sector funds.

Senator EAGLETON. Let me break in there with a devil's advocate question. Can it not be argued, somewhat persuasively, that if Congress, intelligently or unintelligently, sets some outside perimeters on what the Legal Services Corporation can do, debates the limits and scope of what they can do, and makes a decision, and then presume that a President—more likely a future President—signs the bill and it becomes law, and it says they can do A, B, C, and D, but

they cannot do X, Y, and Z with public money—cannot the argument be made that if Congress decided that is what it wanted the legal services to do, and it sets them up, pays the rent on the building or the suite of offices, with typewriters and overhead, those same constraints ought to apply to private moneys as well. They should not have a wide open season to do any and everything under the Sun. If Congress saw fit to limit the public moneys, why shouldn't those limits apply to the private as well.

Mr. McCALPIN. I think, Senator, the answer is almost self-evident, it seems to me. I have no doubt of the right of Congress, first of all, to control the expenditure of public funds. They are collected by taxes from citizens of this country and entrusted to the management of Government, including the legislative branch. I have no disagreement at all about the right of the Congress to determine how the public funds shall be spent.

On the other hand, if private citizens in local communities believe that they, recognizing the needs and requirements of their own local community, decide to raise funds for a purpose not contemplated or not within those authorized by the Congress for the Legal Services Corporation, why should not the local citizens have the right to decide how those funds will be expended?

Senator EAGLETON. They can decide how they want them to spend it, in terms of funding private lawyers or non-legal-services lawyers. Bear in mind, the legal services lawyers have lots of things provided for them—office, typewriters, clerical staff, telephone, Xerox machines, and so on. You state it almost as a truism that one ought to be able to use one's personal funds the way he wants; one can privately spend his funds as he sees fit. I spend mine. But you are using legal services personnel, who are on a Federal payroll—paid indirectly through Federal funds—and then you are broadening the scope of what they can do by the private funds. I do not think it is quite as simple as you make it out to be.

Mr. McCALPIN. It seems to me, for instance, there are some very restrictive regulations that have come out recently about the use of granted funds to pay dues and for training sessions and that sort of thing. It seems to me that if a bar association in a local community decides that it wants to afford the lawyers in the legal services program the advantage of going to a particular training session which they are not permitted to do with Federal funds, there is no reason why they should not.

Senator EAGLETON. Let us take a more difficult one. Take the lobbying prohibition in the Federal law. So private funds are raised, the legal services attorney then goes down to Jefferson City and lobbies like crazy for a particular piece of legislation using the private funds, when he is prohibited from doing so out of public funds. Yet he is still a legal services attorney.

Mr. McCALPIN. First of all, there is no flat all-out total prohibition against legislative advocacy. That is a common misconception that has been floated around.

Senator EAGLETON. But there is some constraint.

Mr. McCALPIN. Certainly there are some constraints, and I find that most of those constraints are legitimate. We implemented certain requirements in the form of instructions and grant conditions to the various programs when I was the Chairman of the Board. I

have no quarrel with those. But it seems to me that if a local community wants to raise the funds to provide a separate and independent service, I guess they could always go hire somebody else outside the program, and maybe we would get at it that way, but it seems to me that if there is a person who is doing permitted lobbying within the legal services program, and there are funds for him to do something else, it is not a very economic system if you require the creation of a separate structure to do that additional thing when privately raised funds are available to do it.

I touched upon most of the items. We have just been talking about legislative advocacy, which I have touched upon here. My own firm belief is that, like class actions, it is an effective and economic tool to handle a common problem that affects commonly a vast number of people. As I have said in my paper, if 100 clients of a grantee have complaints of peeling lead-base paint in 100 different houses or apartments, the problems can be solved through 100 lawsuits or they may be solved through one ordinance or one administrative regulation of a public housing authority.

I recognize and support the need to limit legislative advocacy to specific client problems, with identifiable clients, but do not make legal services grantees squander their scarce resources by resorting to multiple, individual suits when legislative advocacy is a more efficient problem-resolving alternative.

A lot has been said about the private bar's involvement in the provision of legal services. I have outlined in my paper the history, beginning back in 1979 with a proposal by Steven Engelberg, then a board-member lawyer in this city, which produced a half-million-dollar grant to begin to generate pro bono programs around the country. The delivery system study, which we delivered to the Congress in June 1980, clearly envisioned a larger role for the private bar in the provision of legal services to the poor. We sponsored—not the new Board but our Board sponsored—the 10-percent requirement in December 1980. That was intended to and had the effect of generating nearly \$30 million for the involvement of the private bar. Nobody thought that was necessarily a ceiling, but it seemed to us to be a first step which could be used to initiate this concept, get it underway, get some effective administration of it, and then see where it took us in the years ahead.

While I support the involvement of the private bar and the requirement that a substantial part, even a majority, of local boards be lawyers, I believe that clients are entitled to a decisive say as to how the lawyer services shall be provided to them. I am for free choice of attorney by client, but I think that one of those choices needs to be the staff lawyer concept. I am fortified in that conclusion by the experience in the Province of Quebec, where with a full range of opportunities available to them, 70 percent of clients select a staff lawyer and 30 percent the lawyer in private practice.

More than enough already has been said and written in the staff-lawyer versus private-lawyer debate. My own experience in 35 years of active participation in the affairs or the organized bar tells me that only a relatively small percentage of the bar, surely less than half, is really interested in representing poor people, particularly within a fee structure that would make judicare financially possible. Thus, if judicare were mandated, I suspect we would

simply trade the biggest share of representing poor people from one relatively small group of lawyers to another, or possibly even the same lawyers ousted from their staff positions to private practice.

In the meantime, we would have dissipated the enormously effective and productive organization created in the last 18 years.

In conclusion, let me urge upon you a few simple principles as you proceed with this legislation. First, state unequivocally your commitment to the concept of equal justice for all, rich and poor alike. Support the implementation of that principle through the Legal Services Corporation. Require that the Board and staff of the Corporation be experienced and committed to equal justice and the corporation. Permit the Corporation and its grantees to render the best possible legal service to the most possible poor persons in the substantive areas of greatest need. Let the decisions about allocation of resources and systems for the delivery of legal services be made at the local level, by local program boards, which create for poor people the same kind of atmosphere in which lawyers and paying clients operate.

Above all, trust the people, the poor people for whom this program is primarily intended, and be willing to take the heat when a few cries are raised. For in securing equal justice, a few bastions of privilege inevitably will be assaulted. Have faith that in our system, justice will be done and that with this program we come closer to the ideal of equal justice for all. Thank you.

The CHAIRMAN. Thank you, Mr. McCalpin.

[The prepared statement of Mr. McCalpin follows:]

COMMITTEE ON LABOR AND HUMAN RESOURCES
UNITED STATES SENATE

Statement by F. Wm. McCalpin

May 4, 1983
Washington, D. C.

Mr. Chairman and Members of the Committee:

My name is F. Wm. McCalpin. I am engaged in the private practice of law in St. Louis, Missouri, with the firm of Lewis, Rice, Tucker, Allen and Chubb. Since 1964 I have been involved with a number of entities and enterprises in the field of providing legal services to the poor. I am not here today as a representative of any of those entities or enterprises. I appear at the invitation of this Committee solely as a private citizen, an interested lawyer with some experience in the area which you are considering.

As a charter member of the National Advisory Committee to the OEO Legal Services Program, I was deeply involved in the legislative struggles which led to the enactment of the Legal Services Corporation Act in 1974. I testified before this committee or its predecessor during confirmation hearings for the first Board of Directors of the Corporation in 1975. I played a lesser role in connection with the 1977 amendments, but became much more deeply involved following my own confirmation as a member of the Board by the Senate in May, 1979. I recite this history of personal involvement only so that you will understand that I have some appreciation of the issues which you are now addressing.

In my judgment the most serious problem affecting legal services for the poor and the Legal Services Corporation today is not one which can readily be solved by legislation. That problem

is that the people with the greatest responsibility for providing legal services to the poor at the national level, both within and without the Corporation, appear not to support the program, but indeed to oppose it. What is needed now above all else is an administration, a Board of Directors and a staff who passionately believe in equal justice under law and who are firmly committed to the achievement of that objective through the Legal Services Corporation. These times cry for people who believe in aggressive, imaginative advocacy for indigent clients--lawyers, paralegals and support personnel who will approach the evident problems of poor people with an open mind and who, having understood them, will bend their minds and their hearts to the resolution of those problems for the good of their clients, for the administration of justice and for the soul of this country.

Just as the concept of equal justice is enshrined in the Constitution, emblazoned on the facade of the Supreme Court building and declared in the Pledge of Allegiance, so must the support for equal justice begin at the highest levels of the national government. We have been deeply gratified by the support which the Congress has given to the principle of equal justice and the Legal Services Corporation. To the extent that it has been called upon to do so, the judicial branch of government has likewise rendered unswerving support. I am sorry that I cannot say the same for the executive branch.

Outside of government, the people most critical to the enterprise are the members of the Board of Directors of the Corporation. In Section 1004(a) of the Act, the Congress has mandated that a majority of the Board shall be members of the bar of the highest court of some state, that the membership of the Board shall include eligible clients and shall be generally representative of the organized bar, attorneys providing legal assistance to eligible clients and the general public. I fully support and commend that provision to you.

The inclusion of at least two client members on the Board of Directors is absolutely necessary. In my experience, at both the local and national levels, client Board members bring a perspective and an experience which are indispensable to a clear understanding of the problems faced by the Corporation, its staff and its grantees. It is essential that there be more than one client Board member for the mutual support that they can give each other in the face of a majority of outspoken, articulate lawyers who cannot possibly share the same experiences and backgrounds. This principle was recognized in the case of State Advisory Councils in Section 2 of H.R. 3480 in the last Congress.

Similarly, I believe that the Board should include at least one individual experienced in the provision of legal services to indigent clients. It is not sufficient that the majority simply be lawyers, because, for example, an antitrust lawyer who spends five years on a case involving AT&T simply does not understand

the problems of a legal aid lawyer who handles 500 files a year in a dozen different substantive areas of the law.

It is in my judgment important that the Board represent, as far as humanly possible, the breadth and diversity of this country and its people. Our Board was composed of nine lawyers, four women, two blacks, two Hispanics and one Native American. The eleven Board members came from nine different states and the District of Columbia, including two states on the East Coast, two in the far West and five in the Middle West. That Board brought to our deliberations significantly different points of view which frequently resulted in divided votes, but never in bitterness or disharmony.

It had seemed self evident that the President should nominate and the Senate confirm as Board members only those persons who are committed to the principle of equal justice and who are supportive of the Legal Services Corporation as a way to achieve that goal. Recent experience suggests that this principle is not as self evident as believed; so it should be incorporated in Section 1004 of the Act.

Again in the people area, the single most important responsibility of the Board is to recruit and retain a competent staff. That staff must also be composed of people who believe in equal justice, people who understand, will support and can represent clients, irrespective of the forum or nature of the problem.

In my judgment, and this is the managerial principle which we followed, the responsibility of the Board is to define the operational parameters of the Corporation, select the best possible chief executive officer, make him responsible for the staff and then leave the day-to-day operations of the Corporation to that staff. The proper function of the Board is to make the ultimate policy decisions to be implemented by the staff on a day-to-day basis. It would, I think, be a mistake for the Congress or for the Board unduly to concern itself with specific actions implementing policies formulated within the framework of the statutory authorization by a Board nominated and confirmed as required by Section 1004(a).

Questions have been asked as to whether the Legal Services Corporation is a manageable enterprise and whether it can be operated in an apolitical manner. Those questions deserve an answer. The answers are that the enterprise of which the Corporation is the apex can be, and generally has been, operated in an efficient and effective manner but that by its very nature it will probably always be tinged by political controversy.

Unquestionably the Corporation has been well managed in a financial sense. To my knowledge no other government funded program runs on 4% of its appropriation and expends 96% in providing service to the intended recipients. There have been no headlined financial scandals in the Corporation or in the 325 grantees across the country.

The Corporation has also been successful in enhancing - and in some areas initiating - the rule of law in landlord-tenant relations, consumer practices and welfare administration. No longer do poor people in this country look upon the law as something that is done to them instead of for them. In the past eighteen (18) years the poor have gained a foothold, a stake in the justice system - something that was neither apparent nor appreciated in the turbulent 60's and early 70's. The country has gained too in a closer approach to the historic goal of establishing justice which the Preamble to the Constitution puts just ahead of domestic tranquility.

If there is one area in which the Corporation has not been as successful it is in not informing and educating the public - and especially its critics - in what it was about. We have, I am afraid, been so busy perfecting the organization of this entity, which is not yet eight years old, and in spreading its services to every county in the country that we have not taken time to reiterate and explain the reason for a system of laws, the necessity and meaning of justice, equal justice and the role of lawyers, courts and legislative and administrative bodies in administering a system of justice. We assumed a better public understanding than was apparently warranted. In particular upon reflection I believe that we did not listen carefully enough to the complaints of well-intentioned critics, investigate those complaints fully and carefully enough and patiently enough

respond. Having said that let me also say that there was no way we could ever respond satisfactorily enough to the complaints of those with a vested interest in denying or abrogating the rights of poor persons and there were and are plenty of those.

The question whether the Corporation and the movement it represents is political is inextricably entwined with the fact that poor peoples' problems lie not exclusively with or against other poor people. As long as legal services are confined to disputes with and between poor persons and families no one gets exercised. When poor persons seek to enforce their rights against landlords, merchants or other vested private interests hackles begin to rise and that part of the local establishment turns to the public figures who appear to have made this assault possible or have suffered it to happen. When poor persons seek to enforce their rights against public authorities directly - welfare departments, public housing authorities, school districts or hospitals - the attack is viewed as political simply because the affected bodies are public.

The truth is that the poor have historically been denied basic rights by more affluent, more powerful, segments of the community. As a people we responded in part through our elected representatives - the Congress and state legislatures - who created or explicated poor peoples' rights in legislation. Whether through opposition or inertia some persons responsible for acknowledging or implementing those rights fail to do so.

The basic function of the legal services movement is to enforce those rights for poor persons. I believe that one of the great glories of our system of government is that having created or recognized those rights we have provided a mechanism by which even the least powerful among us can secure those rights, even against government itself. That is both the political problem and the political promise of the legal services movement.

I have not, up to this point, given this Committee any specific suggestion or assistance in drafting or redrafting a Legal Services Corporation Act. The point I want to make is that a perfect legislative product can be rendered ineffective and unworkable by people who don't believe in it and support its objectives. A less than perfect statute can be made workable by a Board and staff committed to its objectives.

There may, however, be ways in which legislation can assist the achievement of the ultimate objectives. I think you might well consider making Section 1004(a) more explicit along the lines I have suggested. I believe that the last sentence of that section should be amended to provide specifically that no fewer than two members of the Board shall be eligible clients and that at least one member shall be a person experienced in providing legal services to the poor. Finally, in view of the apparent misunderstanding as evidenced by recent presidential announcements purporting to name the Chairman of the Board, I would recommend that you delete the first sentence in Section 1004(d).

One of the burning issues in the legal services movement has been the use of federal funds to subsidize suits against government, particularly class actions. Suits against governmental agencies by Corporation grantees on behalf of clients are not only necessary, but in many instances are appropriate for utilization of the class action procedure. The truth is that many, perhaps most, of the problems of poor people involve government agencies at the local, state and national levels. Among the most important needs of the poor are food, housing, medical care, education and jobs. The source of these necessities is government through welfare programs, housing authorities, public hospitals and schools, and as a direct or indirect employer. We all know of the administrative lapses, the indifference and sometimes the downright hostility of agency employees to applicants for such assistance. If Legal Services grantees are not permitted to represent indigent persons in redressing their grievances against providers of these necessities of life, the poor will be denied assistance in the areas where they need it most.

I can think of no better illustration of this point than the case of Thompson v. Walsh, 481 F.Supp. 1170 (1979) brought by the Legal Aid agencies of St. Louis and Kansas City in the U. S. District Court in Kansas City. Welfare agencies in the State of Missouri were taking federal funds but not processing claims within 45 days as required by federal regulations. Hundreds of

claimants were left waiting for longer periods of time while their claims dragged through the bureaucratic process. Many came to Legal Aid. Protracted negotiations with the Welfare Departments availed nothing. Suit, a class action, was filed. It was necessary to file a class action because as often as one claimant filed suit, the Welfare Department would quickly process that claim without moving expeditiously on the other hundreds of pending delayed claims. As a result of that action, the federal court in 1976 ordered the State of Missouri to comply with the federal regulations.

That should have been the end of the matter. It wasn't. More than three years later, the Missouri Welfare Department was still not complying with the federal regulations or the court's order. Legal Aid went back to court moving for a contempt citation. The district court's subsequent order directed to the Department of Health, Education and Welfare was ultimately reversed on appeal, but it was not until after nearly six years of litigation that the Missouri welfare officials finally bowed to the requirement that they provide to welfare applicants in Missouri the benefits of the federal program for which they accepted and used federal funds.

Six weeks ago legal aid lawyers in Missouri won a consent decree from the Division of Family Services providing basic protection for children placed in foster care. Two weeks before that a student in the Harvard Law School Legal Aid Bureau won a

class action suit against the Social Security Administration on behalf of persons initially denied disability benefits. There are countless other examples of successful class actions against government agencies to secure poor peoples' rights. For those who may be interested in learning more about the current antipathy to class actions and indeed to suits against government I recommend reading the decision of the Supreme Court of California in Morris v. Williams, 433 P.2d 697 (1967).

The fact is that much of the litigation initiated by legal services programs involves the attempt to make government agencies responsible and accountable to poor people for programs enacted by the Congress and the legislatures of the several states. It would be a mockery of government and of justice if poor people were to be given the hope afforded by these legislative programs, only to have that hope turned to despair through disregard and contempt by the very agencies committed to the implementation of those programs and the inability of the poor through their advocates to secure enforcement.

There is a tendency on the part of some to see such actions against government or private interests, particularly class actions, as some sort of a pre-conceived social agenda. The fact is that the overwhelming caseload of legal services agencies consists of the representation of individual poor persons against other persons, companies or agencies. When massive, headline grabbing class actions are filed they come, just as in Thompson

v. Walsh, out of the experience of hundreds or thousands of poor persons and usually out of the intransigence of the opposing party. They are filed to achieve a common objective for a class of people with a perceived common problem. It is the scarcity of resources, both legal services and judicial, which dictates the class action approach. So called reform actions by legal services grantees have their genesis in perceived and articulated problems of scores of individual poor persons not in the preconceived notions of legal aid lawyers. They are in fact client oriented in their origin.

Another area to which I would direct the Committee's attention is Section 1010(c) of the Act. That section in part provides that non-federal funds received by any Legal Services Corporation grantee cannot be used for any purpose for which federal funds may not be used. I submit that in this day, when federal funds are declining and legal services grantees are being told to look to the private sector, that provision inhibits access to non-federal, private funds. Private citizens or groups in communities across this country are reluctant to provide the needed funds unless they are able to control the purposes for which those funds will be expended. Federal control of private funds in this manner is directly contrary to the concepts of local control and private funding which are and should be significant, if not fundamental, principles in the operation of legal service agencies around the country.

I would strongly urge you not to repeal Section 1011. The lives and hopes which people have invested in 325 grantees around the country should not be subjected to annihilation through arbitrary, summary defunding. New, inexperienced, ideologically motivated administrators should not be permitted to sweep away by fiat the painstakingly developed, tried and successful programs in the field. Events of the last fifteen months give no assurance than an effective, economically run program will be replaced by something better.

We have frequently heard the argument that federal funding for legal services ought to be provided in the form of block grants to the states, which may then decide whether such funds will be used to provide legal services or some other social or economic benefit. Our experience under Title XX of the Social Security Act teaches that this is simply a not so subtle way of saying that no federal funds shall be used to support legal services for the poor. Only a handful of states ever used Title XX funds to provide legal services, and few, if any, do so now. For the reasons I indicated above, the problems of poor people with state and local agencies make virtually certain that, given the opportunity, states will not allocate funds to subsidize complaints and proceedings against state and local agencies.

". . .to . . .establish justice. . . ." was recognized by the framers as a fundamental reason for adoption of the Constitution. The federal government cannot escape that responsibility

by passing it off to the states who are virtually certain to ignore it.

Our Board and its predecessor in 1976 embarked upon a program of providing "minimum access" to the institutions of justice. That program was undertaken with the approbation and support of the Congress in light of the fact that access to legal services was sketchy to non-existent in many parts of the country. By 1981, we had brought legal services within the reach of poor persons in every county in every state in the United States. We had clearly not met all the needs, but at least for those most desperately in need of it, access to justice was a possibility.

The budget cuts of the past two years have necessitated a retreat from the minimum access concept. I would hope that this Committee would, in restating the philosophy and the underlying principles of the legal services movement, push the program back in the direction of minimum access.

The emotionally charged issue of legislative advocacy can be looked upon as lobbying with its pejorative connotations or, like class actions, as an economic use of resources to solve problems. One of the most prevalent problems of the poor is the condition of housing available to them. If 100 clients of a grantee have complaints of peeling lead base paint in 100 different houses or apartments the problems can be resolved through 100 lawsuits or by one administrative regulation or one

duly enacted statute or ordinance. The economies of the latter course are self-evident. I recognize and support the need to limit legislative advocacy to specific client problems, but don't make Legal Services grantees squander scarce resources by resorting to multiple, individual suits when legislative advocacy is a more efficient problem resolving alternative.

Finally, it appears that this Committee will hear much about the involvement of the private bar in the provision of legal services to poor clients. I think that the Committee needs to put this whole issue in perspective.

It may be true that a significant portion of the representation of poor clients was provided by the private bar without compensation in the years before 1965. My clear recollection is that with the advent of the OEO Legal Services Program, the bar breathed a collective sigh of relief in the expectation that this obligation could henceforth be transferred to the federally funded legal aid offices. It is clear that as the availability of legal services for poor people grew and expanded in the years after 1965, a smaller and smaller portion of that responsibility was shouldered by the private bar. In the ten years between 1965 and 1975, applications to the OEO to fund Judicare type programs involving rendition of service by private lawyers could be counted on the fingers of both hands. The bar as individuals was simply not very interested in providing the service.

Commencing with the advent of the Legal Services Corporation, individual lawyers began to express a renewed interest in providing legal services to poor persons. It is debatable whether this new interest arose from a sense of professional responsibility, or from an appreciation of the increasing level of appropriations available for that purpose, or as an ideological reaction to some of the successes of Legal Services lawyers. Whatever the reason, there should be no doubt that the private bar has an important role to play in the provision of legal services to poor persons, but that that role must be examined and even carefully controlled.

At least as long ago as 1979, the Corporation recognized the need to involve the private bar more fully in what it was doing. There was an initial allocation of \$500,000 to entice and encourage experimental programs for the rendition of pro bono services by members of the private bar. The Delivery Systems Study delivered to the Congress in June, 1980 clearly recognized and contemplated an increasing role of the private bar. In December, 1980, the Corporation adopted the principle that 10% of funds going to grantees be used to involve the private bar in providing legal services for poor persons. That 10% amounted to an allocation of almost \$30,000,000 for that purpose. Recognizing the variation in need in different parts of the country and the varying attitudes of the bar, the 10% requirement contemplated a variety of models and vehicles for involvement of the

private bar not necessarily requiring, but not prohibiting, that the 10% be paid in the form of fees for services rendered under a Judicare model. The grantees and the bar responded with a variety of ways to involve the private bar.

In imposing the 10% grant restriction, we deliberately channeled the requirement through existing grantees. We understood that this would necessitate a coming together of the local programs and the local bars to work out the precise approaches which would be used to involve the private bar. We were reluctant, and I think for good reason, to turn these funds over to the private bar directly to be used in ways that it saw fit. Our particular concern was that the private bar would impose on the indigent clientele delivery systems which were unresponsive to the needs and aspirations of that clientele.

The bar in some parts of the country has dictated a private lawyer Judicare arrangement against the wishes and over the opposition of the client community. I firmly believe that the particular delivery system to be used in a given locality is a matter to be worked out in consultation and negotiation between the service provider and the clients. In too many instances where the interests, especially the economics, of the bar have been concerned, the decisions made by the bar have not reflected the objectivity which lawyers display in representing their clients. In some instances, the requirement of Section 1007(c) of the Act that 60% of the board of the grantee be lawyers has

worked against the interests of clients. I am particularly concerned by the provisions which have appeared in H.R. 3480 and in the continuing resolution authorizing bar associations representing the majority of lawyers in the service area to designate the lawyer majority of local boards. This may effectively bar women's, black, Chicano and other minority bars from having a voice in the process. In an integrated bar state it excludes the local bar which is closest to the situation. As an alternative I would recommend that the majority bar association name one-half the lawyer majority and that the rest be selected in other ways.

While I support the involvement of the private bar and the requirement that a substantial part, even a majority, of the local boards be lawyers, I believe that clients are entitled to a decisive say as to how the services of lawyers shall be provided to them. I am for free choice by clients, but I think one of those choices needs to be the staff lawyer concept. I am fortified in that conclusion by the experience in the Province of Quebec where, with the full range of opportunities available to them, 70% of the clients select the staff lawyer and 30% the lawyer in private practice.

More than enough has already been said and written in the staff lawyer versus private lawyer debate. My experience in 35 years of active participation in the affairs of the organized bar tells me that only a relatively small percentage of the bar - surely less than half - is really interested in representing

poor people particularly within a fee structure that would make Judicare financially possible. Thus if Judicare were mandated we would simply trade the biggest share of representing poor people from one relatively small group of lawyers to another - or possibly even the same lawyers ousted from their staff positions to private practice. In the meantime we would have dissipated the enormously effective and productive organization created in the past eighteen (18) years.

I do not believe that tax incentive proposals such as have been suggested would change this result. Few lawyers will change their current practices simply to take 1% or 2% of legal practice income as a deduction for representing poor people. The record keeping and administration, to say nothing of the potential for IRS intrusion upon the lawyer-client relationship, make this scheme impractical. The clamor for similar treatment for other professionals, if an administratively sound scheme could be devised, would make the whole idea fiscally impossible.

Let me urge upon you a few simple principles as you proceed with this legislation. State unequivocally your commitment to the concept of equal justice for all - rich and poor alike. Support the implementation of that principle through the Legal Services Corporation. Require that the Board and staff of the Corporation be experienced and committed to equal justice and the Corporation. Permit the Corporation and its grantees to render the best possible legal service to the most possible poor persons

in the substantive areas of greatest need. Let the decisions about allocation of resources and systems for delivery of legal services be made at the local level by local program boards which create for poor people the same kind of atmosphere in which lawyers and paying clients operate. Above all trust the people, the poor people for whom this program is primarily intended, and be willing to take the heat when a few cries are raised for in securing equal justice a few bastions of privilege will be assaulted. Have faith that in our system justice will be done and that with this program we came closer to the ideal of equal justice for all.

Thank You.

The CHAIRMAN. Let us turn to Mr. Olson at this point. We will take your statement, and then we will have some questions for both of you.

STATEMENT OF WILLIAM J. OLSON, ATTORNEY, WASHINGTON,
D.C.

Mr. OLSON. I am pleased to be able to speak to you today concerning the Legal Services Corporation and certain reauthorization legislation before you. I served as a member of the Board from December 1981 to December 1982, and I was Chairman of the Board for 3 months during that year. I had the opportunity to observe the Corporation during that period and learn something about its activities. I would like the opportunity, since I prepared my comments on very short notice, to expand them with the committee's permission.

The CHAIRMAN. Surely.

Mr. OLSON. Last December, the Board of Directors on which I served came under attack by some, particularly certain Members of the House, for having charged what were called excessive fees for service as directors. These charges were investigated by the Office of Management and Budget and found to be invalid, both from a legal and an audit perspective, and these charges are also the subject of an investigation by the GAO, which issued a legal opinion finding that the charges of violating a Federal statute were invalid. The GAO currently is finishing an audit report, which I understand will be completed in the near future. I understand that these hearings do not involve these accusations but rather the possible reauthorization legislation. Nevertheless, if these charges become the subject of questioning, I would ask that the OMB report and the GAO legal opinion, both of which show the invalidity of these charges, be made part of the record of this hearing.

The CHAIRMAN. I do not think that is part of the hearing, unless one of our Senators wants to make it such.

Senator EAGLETON. I have no intention of doing that.

Mr. OLSON. The committee may want to have copies of them anyway, since this is within the jurisdiction of the committee.

Service on the Board of Directors has been one of the most frustrating experiences which I have ever had. From the very beginning, I had the view that the Corporation must be reformed, could be reformed, and the status quo had to be changed. The use of Federal funds for law reform and impact litigation, in my opinion, was and is wrong. It is bad public policy, and I believe most Americans would oppose it. The Federal Government should not fund any side of what are essentially political disputes. Payments of funds to national State support centers, which operate largely as liberal public interest law firms, is simply wrong. Payment of funds to lobby, either directly or at the grassroots level, is wrong.

Unfortunately, these and many of the other problems which we on the Board perceived, we were unable to do very much about and I am sorry that I cannot do much to assure you that taxpayer funds are no longer going to advance a particular philosophy of Government.

We had a great deal of problems on the Board in doing our job, and I would like to submit that many of these problems are endemic in the structure of the Legal Services Corporation and, therefore, deserving of attention by your committee as you consider reauthorization. We had many occasions where the staff of the Corporation was completely committed to the status quo, was unwilling to provide Board members with information which was necessary in order to work to reform the Corporation, and a lot of the material which came to the Board was of little help to the Board in reforming the Corporation.

The Corporation's Board has a responsibility of oversight. This committee and the other committees of the House and Senate with jurisdiction have a responsibility in the oversight. However, we were unable to do our job to a large extent because there are certain established practices of Legal Services which appear very difficult to change. Staff papers, on the National Clients Council for example, are routinely reviewed by the National Clients Council before the Board ever sees them. Presumably, this is done in the interest of accuracy, but that simply is not an adequate rationale. I have much more about this in my prepared testimony.

I would say, and this is of particular importance to you at this time, in the area of the congressionally mandated restrictions on the Corporation, that I must report that whether we speak about the Mazzoli amendment with respect to abortion, the Moorhead amendment with respect to grassroots lobbying, the alien representation restriction or others, there is substantial noncompliance by grantees and contractors with regard to the restrictions you have placed on the programs. We attempted to strengthen regulations and improve the regulations that you have directed us to adopt, but we have had very little success.

We repeatedly found out that Corporation funds were being used for newsletters to stimulate grassroots lobbying. We had hearings in Jackson, Miss., on this subject, where most national support centers testified and most admitted that they were engaged in these kinds of activities, although they do not characterize them as lobbying. They characterize them as information dissemination and

other euphemisms for grassroots lobbying. They are engaged in networking among liberal groups, particularly in opposition to President Reagan's proposals with respect to block grants and other matters. There are many congressional restrictions that have been repeatedly and flagrantly violated by the Corporation, based in part on opinions of General Counsel of the Legal Services Corporation interpreting those restrictions in a way so as to give them no meaning whatsoever.

I, for one, have never understood why the Congress has not been literally up in arms about the noncompliance of this program with the restrictions that you impose on the Corporation. But this non-compliance is absolutely disregarded up here, and the restrictions are disregarded at the Corporation. I hope that this is now a new chapter in congressional oversight.

In my opinion, the Corporation is badly in need of reform, but for our Board, reform proved almost impossible. It is true that we exposed that there are \$41 million in fund balances which were being maintained in the bank accounts of local programs, while these same programs were pleading poverty in the face of a 25-percent budget cut which went into effect last year. We did force the return of some of those funds to the national Corporation for reassignment. We did force some of those funds to be used properly to meet the needs of the poor, but I cannot guarantee you that we had the perfect success along those lines.

We also created an Office of Inspector General, but it is too soon to know what is going to happen with respect to increased compliance by the Corporation. I would say that, regardless of the good intentions of the Board members and no matter how hard they work to obtain reform, and even if there was a cooperative staff helping the Board to reform the Corporation, reform is now legislatively prohibited. Senator Weicker's amendment, adopted by the Congress last year, mandates continued funding for all local grantees and contractors, whether they deserve it or not, whether they are found to be in massive violation of Federal law or not, and whether they have requested it or not—which is one of the more interesting aspects of the restriction, and I do not know how that is being handled. It is an extension of the unprecedented provision in the Legal Services Corporation Act which says that once an organization is funded by the Legal Services Corporation, it has a presumptive right to refunding. Now that presumptive right is made a conclusive presumption; it is un rebuttable; the Board of Directors is powerless to deal with noncompliance by local programs.

I would submit that this robs the Board of Directors and the Corporation the ability to reform the Legal Services Corporation. This is an intolerable result. I would urge that when reforms are being considered by this committee, you realize how little compliance has been given to prior reforms that have been written into law, and I would urge you to explore alternatives to the current structure which would allow greater accountability for taxpayer dollars being spent in this area. Thank you.

The CHAIRMAN. Thank you, Mr. Olson.

[The prepared statement of Mr. Olson follows:]

STATEMENT OF WILLIAM J. OLSON
REGARDING THE LEGAL SERVICES CORPORATION
HEARING OF THE SENATE LABOR AND
HUMAN RESOURCES COMMITTEE
MAY 4, 1983

Mr. Chairman and members of the Committee. I am pleased to be able to speak to you today during your review of the Legal Services Corporation and certain reauthorization legislation.

I served as a member of the Board of Directors from December 1981 through December 1982 and as Chairman of the Board for a three month period. In that capacity I had an opportunity to learn something about the activities of the Corporation and I wish to share with you some of my thoughts. These comments were prepared on very short notice, and I would appreciate the opportunity to expand on them for the record, with your permission.

Last December the Board of Directors on which I served came under attack by some, particularly certain members of the House, for having charged what were called excessive fees for service as Directors. These charges were investigated by the Office of Management and Budget and found to be invalid both from a legal and an audit perspective. These charges are also the subject of an investigation by the General Accounting Office, which issued a legal opinion finding that the charges of violation of federal statute were invalid as a matter of law. The GAO is currently finishing an audit report which I understand will be completed within the near future. I understand that these hearings do not involve these accusations but rather involve possible reauthorization legislation. Nevertheless, if these charges become the subject of questioning I would ask that the OMB report and the GAO legal opinion both of which show the invalidity of these charges be made part of the record of this hearing.

Service as a member of the Board of Directors of the Legal Services Corporation was among the most frustrating experiences which I have had. From the outset I stated my belief that the Corporation must be reformed and that the status quo was unacceptable. The use of federal funds for law reform and impact litigation was and is wrong. It is bad public policy and I believe it would be opposed by most Americans if they knew what was going on at the Legal Services Corporation. The federal government should not fund any side in what is an essentially political debate. Payment of funds to national and state support centers which operate largely as liberal public-interest law firms is wrong. Payment of funds to support centers or local programs to lobby either directly or at the grass-roots level is wrong. These and many other problems at the Corporation were the subject of investigation by our Board, but I regret to inform you that we accomplished little in insuring that taxpayer funds do not go to promote the advancement of a philosophy -- a liberal philosophy.

The problems one faces as a Board member trying to do a good job are enormous. In the past staff assistance has been reserved for members of the Board who would work with the staff to insure the preservation of the status quo. I made several requests for information which went unanswered for six months or more, despite follow-up requests. As of the day I left the Board when the Senate adjourned in December I still had not been provided with the status of fund balances of national support centers despite numerous requests.

The material which comes to the Board from the staff is of little value in building a case for reform. The staff papers on grantees and contractors are routinely provided to the objects of the report for review and editing. This is truly incredible. Let me illustrate this. When the staff prepared a paper on the National Clients Council last November, it was given in draft form to the National Clients Council for changes, before it went to the Board. When Clarence McKee, our Board Vice-Chairman, and I complained about this we were asked: you want the reports to be accurate, don't you -- and who could better insure accuracy than the object of the report. If the staff cannot insure accuracy without this procedure, we have real problems with the staff. This clearance procedure results in the Board being given only what those who are funded want the Board to have. This is just one of many ways in which the status quo is preserved against attack by reform-minded Board members.

In the area of Congressionally mandated restrictions, the news is just as bad. The Congress has imposed the Mazzoli amendment, the Moorehead amendment, the alien representation restriction, and others, but let me say that it is my view that the grantees and contractors are in substantial noncompliance. We found uncontroverted evidence that Corporation funds were being used for newsletters which stimulated grass-roots lobbying on issues of public policy, evidence that Corporation funds were used to stimulate "networking" among liberal groups, particularly those opposed to President Reagan's domestic spending reforms; and used to represent aliens in accordance with legal opinions issued by the Corporation which show little desire to comply with Congressional restrictions. I have never understood why the Congress has not been literally up in arms about noncompliance with these restrictions, but they are disregarded without criticism.

The Legal Services Corporation is a program badly in need of reform, and yet for our Board, reform proved to be virtually impossible. It is true that we exposed that \$40 million in fund balances were maintained in bank accounts by local programs while those same programs pleaded poverty in the face of the 25 percent cutback in funding for 1982. We forced the return of some of those funds by some programs, and forced some other local programs to spend those funds to meet the needs of their clients. It is true that we created an office of Inspector-General for the first time, but it is hard to know how effective that will be.

Regardless of the good intentions of Board members to seek reform, and even with a cooperative staff, reform is now legislatively prohibited. Last year the Congress adopted the amendment proposed by Senator Weicker which freezes funding for all grantees and contractors until a Board is confirmed. Aside from being thoroughly unconstitutional, in my view, this provision guarantees that funding will continue for groups regardless of whether they deserve continued funding. It is an extension of the unprecedented provision in the Legal Services Corporation Act that groups, once funded, have a presumptive right to refunding in perpetuity. This makes the presumption un rebuttable and renders the Board of Directors a powerless force within the program. It makes the Board have the illusion of independent control with little reality. As I said, it legislatively prohibits reform of the Legal Services Corporation, and that is intolerable.

I appreciate the opportunity to be with you today.

The CHAIRMAN. Let me first turn to Mr. McCalpin, and then I will come to you with some questions, Mr. Olson.

Mr. McCalpin, recently the Supreme Court in *Lasser v. Department of Social Services* held that there was no constitutional right to counsel where an indigent is not in jeopardy of being deprived of his or her physical liberty—that is, in most civil actions. Do you agree with the court in that area?

Mr. McCALPIN. Senator, it is clear that we do not have on the civil side of the law the counterpart of the sixth amendment to the Constitution on the criminal side. What I recommended to the other body last month is that it seems to me that it is past time for somebody—and I think the Congress is the appropriate place—to consider whether, to what extent, in what circumstances there ought to be enunciated a right to counsel in civil cases, such as is contained in the statute law of Quebec, the Constitution of India, and other places.

My own feeling is that we would be better off to have that thrashed out in the legislative arena than to have the courts impose it upon us piecemeal, from time to time, particularly in constitutional terms which will be very difficult to handle. I believe that the Congress ought to address that issue in a way that, so far as I know, it has not in any comprehensive fashion.

The CHAIRMAN. Do you have any idea what the cost would be if the Congress instigated such a right?

Mr. McCALPIN. For one thing, Senator, it seems to me that the Congress could decide that there is a right to counsel in some types of civil actions but not others. The Congress could structure the right in such a way as to control the cost and the expenditure, or affirmatively to say that there is no right. I can tell you that I know of a case which says that an alien about to be deported has a right to counsel but that a citizen who is going to lose parental rights over a child has no such right. We have a hodge-podge of cases around the country which make no sense at all in this area.

The CHAIRMAN. Mr. McCalpin, there seems to be a little confusion in these hearings concerning the funds available under title 20 of the Social Security Act. On April 7, 1983, before the House Judi-

ciary Committee, you stated that only a handful of States ever used title 20 to fund legal services, and few, if any, do so now. The Congressional Research Service found that in 1981, legal services programs received almost \$15 million in funds under title 20, and the Legal Services Corporation is estimating this year that it will receive \$12 million under this program.

Given these figures, what is the basis on which you make your claim that few, if any, funds were available under this program?

Mr. McCALPIN. Few, if any, funds were made available, and \$12 or \$15 million is not a few funds. But my own examination into this subject disclosed that at the high water mark of the use of title 20 funds for legal services in the middle to late seventies, there were 12 to 15 States—Pennsylvania was the State which most used those funds; I believe about \$6 million in that one State in 1 year—but there was a retreat and a withdrawal, and at another point there were only 6 States using it. I must say that as of this moment, I do not know the number of States using title 20 funds for legal services, but in my judgment they are not more than a handful.

The CHAIRMAN. During your tenure as a Board member, there were at least two suits brought by local grantees, attempting to force State governments to fund sex change operations. John Barrett, the executive director of the Legal Services Corporation in Iowa, estimated that during 1980, the year in which his agency brought the Iowa suit, he was forced to turn away 16,000 people who needed legal help.

Do you believe that these suits were an appropriate expenditure of legal services funds?

Mr. McCALPIN. I am glad you asked that question, Senator, because I took occasion 2 years ago, when I was in Connecticut to make a speech, to look into the circumstances of that case, which I can discuss with you. It turns out that the individual, first of all, was a totally eligible client. Second, the individual had suffered the natural misfortune of having been born with ambiguous physical equipment, had been raised as a male, had attempted to enter the work force as a male, had suffered extreme psychological injury as a result of trying to perform in a role for which it was not psychologically suited, went to a physician who recommended and prescribed that the sex change operation would permit that individual to become a useful, working self-supporting member of society and be removed from the welfare rolls where that individual had been.

It was on that basis that the legal services program in Connecticut undertook the suit on behalf of that individual to try to obtain that medical result which would rehabilitate the individual and make it a functioning and supporting member of society. In the course of the trial, the medical testimony was conflicting, and the ultimate result was that on the basis of the conflicting medical testimony, it could not be determined with the requisite degree of certainty that the operation would indeed achieve the result that was intended, and the result was a defendant's verdict.

I suggest to you that it is really no different than a medical/legal type of problem which we deal with all the time in personal injury actions. It turns out that the case was lost, but there was an eligible client and a justifiable reason for bringing the action.

The CHAIRMAN. You felt it was justified?

Mr. McCALPIN. I think that one was justified. I do not know the circumstances of the Iowa suit to which you refer.

The CHAIRMAN. When you were Chairman of the Corporation, Mr. McCalpin, what steps did you take to determine the amount of real estate being purchased by the Corporation, the amount of fees which grantees were earning, the size of carry-over balances, and the amount of money grantees were holding in bank accounts? Were you able to take any actions with regard to that? One thing I am finding is that the Corporation does not seem to have any of these kinds of records on the national level.

Mr. McCALPIN. I am not sure what there is in the way of records. I can tell you what I recollect from conversations with people at the time. One, I am aware that there were some programs where the local boards felt, in view of the rents and other overhead payments that were being made, that it was a wise and economical expenditure of the funds to avoid the rental payments and purchase real estate. I cannot tell you how many there were, but I certainly heard discussions of such matters at that time.

Second, I can say to you that without being able to put numbers on it, I am reasonably satisfied that the very significant size of hold-over funds at the end of 1981 was largely attributable to the uncertainty generated by the letter which I received from the Director of the Office of Management and Budget, under date of March 6, 1981, saying that the President would not recommend any further funding for the Corporation and would seek its termination.

I think that sent a shiver and a chill throughout the entire enterprise, and people began to worry about how to smooth out their activities for the future. I believe that caused the stockpiling of funds.

The CHAIRMAN. One of the concerns that I had was, now, this stockpiling might have taken place after your tenure, but let me give you example of the kinds of things I'm talking about.

As I recall it, the Birmingham Legal Services Corporation was a \$1 million per year grantee under legal services, but they spent \$500,000 on a building. Now, whether that is justified or not, I do not know. I just wondered what kind of procedures or what kind of approaches were taken to monitor this type of activity.

Mr. McCALPIN. Let me say, Senator, that I believe that any such expenditure as that showed up in the grant application process and was known to the staff of the Corporation at the time the grant application was acted upon. If it appeared to be a wise and effective use of the funds against the expenditure of rents and that sort of thing, it was probably true. I can say to you, as I am sure you know, that a program which had an 81 percent carryover of funds, was the program which was managed by the present director of the Office of Field Services of the Corporation, the one in southwest Missouri, at Springfield. Much of that was because of the cases in the pipeline and the fact that it was a startup program. That is another factor. Many of the programs that had carryover funds were new programs just getting started. They had a whole year's grant, but they were not able to spend it at the full rate from the very beginning.

The CHAIRMAN. One of the problems I am having is that it seems to me that the Board of Directors of the Legal Services Corporation really has very little idea of what is happening in this field. You heard Mr. Bogard testify that they do not make out timesheets, they do not keep track of business. I know I had to do that when I practiced law, and I am sure you do it in your firm. I am sure you keep timesheets; you know what you are doing, you know what you have done, you know what you can bill. They were, frankly, the only effective means we had of monitoring our own time as well as that of our associates or partners. Such a requirement seems to me to be one of the most basic management tools that one would implement if he were to try to run a good office.

Mr. McCALPIN. Senator, let me suggest to you that there are still very successful law offices in this country who do not charge on time basis, who do not keep time records, and who function very well. We do in ours, just as—

The CHAIRMAN. They have to be the exception, and they would have to be very exceptional.

Mr. McCALPIN. I think you will find that most of the personal injury lawyers do not keep time records.

The CHAIRMAN. I think you will find that they keep very extensive and very complete records. I think many of them do keep time records, especially those in antitrust cases. Frankly, I do not equate legal services lawyers with personal injury lawyers. They can be, on occasion.

Senator EAGLETON. It is an indictable offense for a personal injury lawyer to keep a timesheet.

The CHAIRMAN. Let me just ask you one more thing. I have others, but I think I will submit them to you in writing.

Mr. McCALPIN. I would be delighted. And incidentally, Senator, if I may interject at this point, at such time as you get any charges, accusations, or complaints about these various programs, I do not have a \$241 million grant either, but I would be glad to try to do my level best to get any facts that may assist this committee in investigating those. I believe that Mr. Freivogel is essentially right in his article.

The CHAIRMAN. I cannot comment on that, other than I appreciate your comments, and also that you are willing to assist the committee in any way you can.

You see, one of the things that bothers me is that I want legal services for the poor, but I want them to be handled expeditiously, without politics, and without political advocacy. It is always said that 96 percent of legal services money are really going directly for services to the poor, the so-called mundane legal services that all the poor need just like you and I may need them from time to time. Yet, how can anyone determine that, since no one knows what they are doing. There is no management system to keep track of what is really going on.

I might just mention, that when one of the local grantees tried to impose timesheets, the staff attorneys went out on strike. So they basically abandoned the concept. I think that is utter arrogance. I think the public deserves to have some sort of accountability, even from legal services lawyers and legal services grantees. I do not

know how to institute that, but it seems to me that is something Tom and I can resolve as we try and work on these problems.

Mr. McCALPIN. I certainly do not disagree with your objections, Senator. I agree with you completely that we ought to have the most effective, economical services for poor people in the areas where they need them the most. I am not sure that is always a one-on-one representation.

The CHAIRMAN. I am not sure that is so either. Now, let me just say this. I have here a copy of a publication put out by the corporation in December 1981. This was during your tenure, as I understand it. It is entitled, "Getting the Greatest Benefit From Your Legislator, a Guide for Trainers Training Responsible Persons, a Training Program for Legal Services Advocates." It was put out by the Office of Program Support, Legal Services Corporation here in Washington, D.C.

I just question, is this not a direct violation of section 107(b)(6) of the Legal Services Corporation Act, which prohibits the use of LSC funds to encourage political activity? I will read that to you. That section says, "No funds shall be made available or may be used" and (6) says:

To support or conduct training programs for the purpose of advocating particular public policy or encouraging political activities, labor or antilabor activities, boycotts, picketing, strikes and demonstration, as distinguished from the dissemination of information about such policies or activities, except that this provision shall not be construed to prohibit the training of attorneys or paralegal personnel necessary to prepare them to provide adequate legal assistance to eligible clients.

Mr. McCALPIN. First of all, let me say, Senator, I am not familiar with the document which you have raised there. I do not know whether I ever saw it or not.

The CHAIRMAN. Without objection, we will put it in the record for whatever benefit that may be to either point of view on this subject.

[Material supplied for the record follows:]

"(b) No funds made available by the Corporation under this title, either by grant or contract, may be used—

"(1) to provide legal assistance (except in accordance with guidelines promulgated by the Corporation) with respect to any fee-generating case, (which guidelines shall not preclude the provision of legal assistance in cases in which a client seeks only statutory benefits and appropriate private representation is not available);

"(2) to provide legal assistance with respect to any criminal proceeding, except to provide assistance to a person charged with a misdemeanor or lesser offense or its equivalent in an Indian tribal court;

"(3) to provide legal assistance in civil actions to persons who have been convicted of a criminal charge where the civil action arises out of alleged acts or failures to act and the action is brought against an officer of the court or against a law enforcement official for the purpose of challenging the validity of the criminal conviction;

"(4) for any of the political activities prohibited in paragraph (6) of subsection (a) of this section;

"(5) to make grants to or enter into contracts with any private law firm which expends 50 percent or more of its resources and time litigating issues in the broad interests of a majority of the public;

(6) to support or conduct training programs for the purpose of advocating particular public policies or encouraging political activities, labor or anti-labor activities, boycotts, picketing, strikes, and demonstrations, as distinguished from the dissemination of information about such policies or activities, except that this provision shall not be construed to prohibit the hiring of attorneys or paralegal personnel necessary to prepare them to provide adequate legal assistance to eligible clients;

"(7) to initiate the formation or act as an organizer of any association, federation, or similar entity, except that this paragraph shall not be construed to prohibit the provision of legal assistance to eligible clients;

"(8) provide legal assistance with respect to any proceeding of litigation which seeks to procure a nontherapeutic abortion or to compel any individual institution to perform an abortion, or assist in the performance of an abortion, or provide facilities for the performance of an abortion, contrary to the religious beliefs or moral convictions of such individual or institution;

"(9) to provide legal assistance with respect to any proceeding or litigation relating to the desegregation of any elementary or secondary school or school system, except that nothing in this paragraph shall prohibit the provision of legal advice to eligible clients with respect to such client's legal rights and responsibilities or

"(10) to provide legal assistance with respect to any pro-

ceedings of litigation arising out of a violation of the Military Selective Service Act or of desertion from the Armed Forces of the United States, except that legal assistance may be provided to an eligible client in a civil action in which such client alleges that he was improperly classified prior to July 1, 1973, under the Military Selective Service Act or prior corresponding law

"(c) In making grants or entering into contracts for legal assistance, the Corporation shall insure that any recipient organized solely for the purpose of providing legal assistance to eligible clients is governed by a body at least 60 percent of which consists of attorneys who are members of the bar of a State in which the legal assistance is to be provided (except that the Corporation (1) shall upon application grant waivers to permit a legal services program supported under section 222(a)(3) of the Economic Opportunity Act of 1964 which on the date of enactment of this title has a majority of persons who are not attorneys on its policy-making board to continue such a non-attorney majority under the provisions of this title and (2) may grant, pursuant to regulations issued by the Corporation, such a waiver for recipients which, because of the nature of the population they serve, are unable to comply with such requirement) and at least one-third of which consists of persons who are, when selected, eligible clients who may also be representatives of associations or organizations of eligible clients. Any such attorney, while serving on such board, shall not receive compensation from a recipient.

"(d) The Corporation shall monitor and evaluate and provide for independent evaluations of programs supported in whole or in part under this title to insure that the provisions of this title and the bylaws of the Corporation and applicable rules, regulations, and guidelines promulgated pursuant to this title are carried out.

"(e) The president of the Corporation is authorized to make grants and enter into contracts under this title

"(f) At least thirty days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly and shall notify the Governor, the State bar association of any State, and the principal local bar associations if there be any of any community where legal assistance will thereby be initiated of such grant, contract or project. Notification shall include a reasonable description of the grant application or proposed contract or project and request comments and recommendations

"(g) The Corporation shall provide for comprehensive independent study of the existing staff attorney program under this Act and through the use of appropriate demonstration projects of alternative and supplemental methods of delivery of legal services to eligible clients including judicial vouchers, prepaid legal insurance, and contracts with law firms, and based upon the results of such study, shall make recommendations to the President and the Congress, not later than two years after the first meeting of the Board concerning improvements, changes, or alternative methods for the efficient, rational and effective delivery of such services

Program
evaluation

Staff attorney
program
study

Mr. McCALPIN. Furthermore, I do not know whether it was intended for the training of attorneys or paralegal personnel to prepare them to provide adequate legal assistance to eligible clients, which would have been permitted under the act.

The CHAIRMAN. We will put it in the record. We will all look at it and see what we think about it, but it appears to me that it is in violation of that section.

I understand that being a manager does not mean you know every detail and every jot and tittle that goes on in the department that you manage. I am not trying to put you on the spot. I am just trying to point out that these are some of the criticisms that have been made, and I might add, by Mr. Phillips as well. I think factual and constructive criticism is good, and if we are ever going to have a program that everybody supports, then it seems to me that we have to resolve some of these problems.

Mr. McCALPIN. I think we should have paid more attention to some of the well-intentioned criticism.

The CHAIRMAN. I do not even care if it is well-intentioned, as long as it is constructive and accurate. If Mr. Phillips is inaccurate in some of the accusations he has made, if Freivogel's article is accurate, maybe that is a very valid criticism here. Maybe we should look into it, but I think his point here is well taken. This committee has an obligation to oversee this area, and we should get into it. There has been enough controversy and enough heat on this issue that I think we should get into it. I would be interested, and our colleagues would strongly support it, as I know my good friend, Senator Eagleton, does for the best of reasons. If we can cooperate together, maybe we can get into this and clear up some of these problems that some of the ardent critics of legal services have identified. Perhaps because we have not done much oversight, I tend to find lots of criticism, but, there is enough there to make me upset, even though it may not be to the extent or depth that some of the critics have claimed. I will pledge this committee to doing a better job of oversight of legal services and see what we can do. In the end, we will do everybody a favor if we do it fairly and honestly, and that is all I think you can ask of us.

Mr. McCALPIN. I agree with you, and I am willing to lend any assistance I can to the committee.

The CHAIRMAN. That means a lot to me, and I personally appreciate it. I appreciate your testimony and your answers to these questions here today.

Mr. Olson, why do you believe that the Legal Services Board of Directors, prior to 1982, was ineffective in managing the Corporation?

Mr. OLSON. There have been many problems with the degree of supervision over this program by the Board and by the Congress. Prior to the time we came on the Board in December 1981, the Board gave really perfunctory review to many of the problems of the Corporation. I have used this example before, and it concerns a statement by Bill, and I am sure he will not mind me making it here. I remember reading in the minutes of the December 1981 Board meeting, at which time they approved the consolidated operating budget for the ensuing calendar year. Bill made a comment such as, "I am sorry that some of you on the Board have not had

more than an hour to review the budget, but we are going to go ahead and vote on it anyway."

That was the degree of oversight that some members exhibited at some times. The Board had a committee structure, and in prior years, whatever the committees recommended was approved very much automatically. Indeed, whatever the staff recommended to the committees very often was largely approved. We broke tradition on that and took some heat for it.

I am sure Bill also would not mind my saying that we have all had problems in trying to get cooperation from the staff. As chairmen, we each had many letters written to us with specific complaints from the local programs. I found the exact same thing Bill did, when Bill and I met to try to avoid the litigation in which his board sued our board. He mentioned that many times—and I found the same thing—you would send a complaint over to the corporation, and they would write back and say, "We have investigated it. There is nothing to it. Don't worry about a thing. We've checked out the facts. There are no facts to support it, there is no law to support it, and everything is fine. We appreciate your interest."

That is the degree of true self-scrutiny that has existed over the years. I think that this has to end. The problem now is the Weicker amendment has stripped from the Board the power to do anything about what it finds the program is doing wrong.

The CHAIRMAN. Last year during your confirmation hearing before this committee, you asked the Congress to give you and the other Board members an opportunity to reform the Corporation. Based upon your experience, do you believe that the Corporation can be reformed by the Board or by Congress and still keep its basic structure intact?

Mr. OLSON. You are right, I did. I came before this committee and was asked questions along those lines as to what we wanted to do. I said that I believed we should have the chance to try to reform this Corporation. I was the object of some criticism by many conservative colleagues and friends of mine who had come to another conclusion. All I can say is that we achieved very little, after much hard work, in terms of substantive reform, of meeting these essential problems of the Corporation.

I find, with the Weicker amendment particularly, no evidence that adequate reforms will be implemented to insure that the Corporation funds be used to provide services to meet the needs of individual poor persons as opposed to advancing political philosophy. All I can say is, with the Weicker amendment there is no hope of reform. With a committed Board and a committed staff, there is a possibility, but my service on the Board evidences no real hope that fundamental reform can occur within a structure where we have 325 local nonprofit corporations that are autonomous, that have their own boards of directors that are solely responsible for their own priority setting, that are really not responsible to the Corporation. Some of them have refused to allow our investigators and auditors on their premises. They have literally barred them at the door. We have had tremendous problems in obtaining cooperation at the local level.

I think the time has come to analyze the structure to find out whether another structure would better serve the purpose of meet-

ing the needs of individual poor persons than the current structure.

The CHAIRMAN. Let me ask one other question. It is a kind of dangerous one for me to ask, but I want your candid answer. How would you judge the quality of congressional oversight of the Legal Services Corporation?

Mr. OLSON. I began to get into this in my statement. I would just say that I am very disappointed that over the last several years, for some reason, the congressionally imposed restrictions have not been monitored by the committees with jurisdiction. If you would ask me to speculate as to what is happening, I think part of it is politics. Part of it is that the persons who serve on those committees in certain leadership roles in the past were not sympathetic to the restriction to begin with. Indeed, you find less support for restrictions, typically let us say, on the House authorizing committee than you do in the House as a whole. The House as a whole voted to ban class actions, but the authorizing subcommittee has very little support for that position on it, if any.

By and large, what happens is that the people who do not share the view of those who wrote the restrictions are charged with insuring compliant. At least that has been true up to the last couple of years. And I think now that, whether these persons responsible for oversight are sympathetic or not, they must insure that these congressional restrictions are enforced.

The CHAIRMAN. Thank you.

Mr. McCALPIN. Senator, I wonder if I may correct the record and supplement it in one respect. Today and on a number of prior occasions, Mr. Olson has made reference to a statement which apparently I made and was incorporated in the minutes at the time the budget of the Corporation was adopted. It may very well be true that we had spent an hour discussing and analyzing the budget on that occasion, but I think the record also should show that the Audit and Appropriations Committee of the Board first met on that budget in August of that year. At that time, there were five members of the Board present. Certain aspects of that budget were also considered at the full Board meeting in September of that year. The Committee on Audit and Appropriations considered the budget again at some length in November of that year, when more than a majority of the board was present.

It may be that there was only an hour given at the full Board meeting in December upon the adoption of that budget, but that budget had been considered by the committee on two prior occasions and, in part, by the Board on another occasion. It simply is not true that only an hour's consideration was given by the Board to the adoption of a \$250 million or \$300 million budget.

The CHAIRMAN. Mr. Olson, do you have a comment?

Mr. OLSON. Mr. Chairman, I simply would say that this rebuts a point that I did not make. Mr. McCalpin's earlier statement was that certain members of the board did not have more than an hour to review it. That is un rebutted. I did say that the Appropriations and Audit Committee did spend some time but many Board members did not. It is indicative of the way in which the Board managed the program prior to our Board.

If we are clarifying the record, I want to say that one of the most misleading statistics that is used by persons who wish to protect the Corporation from congressional scrutiny is a statistic that my friend, Mr. McCalpin, used. It is that only 4 percent or 3 percent or whatever of corporation funds are used for administrative costs. That is simply untrue. We have a lot of creative budget writing in the Legal Services Corporation. I served on the Appropriations and Audit Committee during most of the time that I was a member of the Board. I was engaged in some reform efforts to try to tell the truth with respect to what the money was going for, but there is a great deal of obfuscation in the consolidated operating budget which the Congress gets from the corporation, in terms of what expenses are for the direct provision of legal services, what are for the support functions, what are for administrative costs.

I can give you two examples. Support centers, which by any definition at all are a support function, as opposed to a direct delivery function, are classified under the direct provision of legal services to the poor and not support. It is absolutely ridiculous, but that is the way it has been done for years. Second, all the administrative costs of local programs—and again we have 325 local programs around the country, plus many others like the Clients Council and others—that each have their own administrative costs that are very substantial.

To say that every dollar that goes into the hands of a local program has a zero administrative component to it is incorrect. It is one of those fallacies that this program has carried with it. People have come up here and blithely told this Congress that the administrative costs are only 4 percent of the budget, and that is just untrue. What they are talking about are the administrative costs of the national office and the regional offices. The way this program is decentralized, where all the responsibility is basically at the local level with respect to priority setting, with respect to the delivery of legal services, you simply cannot make that statement.

Mr. Chairman, I would just say very quickly, that there are many other things we discovered during the time we were on that board. We discovered that the Project Advisory Group, which is a group which is funded through payments by each local program that chooses to join it with a percentage of their dues, took \$40,000 and gave it to the Coalition for Legal Services. The Project Advisory Group is a foundation, and the Coalition for Legal Services is a lobbying group. The Coalition for Legal Services used that money, presumably, to advance the work that it did in lobbying against the Reagan proposals in this area, lobbying against the confirmation of Reagan Board members, lobbying in support of the status quo, lobbying in support of the Weicker amendment.

I think it is intolerable, when we have a circumstance like this. This is only one example, and I wish I had time to go into more, but there is much laundering of Legal Services funds. The money is paid to the local programs. The local programs, through dues and registration fees and other fees, pay the money into the hands of third-party organizations that this Congress never would fund directly, and that money is used for purposes that are impermissible under the act.

The CHAIRMAN. I would like for you to submit that information in the Corporation's hearings.

Mr. OLSON. I absolutely will. It is a matter of record.

The CHAIRMAN. I will keep the record open, and I would like that submitted because that seems to me to be highly improper.

You would agree on that point, would you not, Mr. McCalpin?

Mr. McCALPIN. You know, it is a case of painting with a broad brush again. I submit that the facts simply will not support the broad statements that Mr. Olson has just made.

The CHAIRMAN. We have a vote, and I have three more witnesses to go. I would like to keep the record open for either of you to submit information. We can have members of the committee make sure both of you get the others' comments, because we sure have a wide disparity in viewpoints here. I think both of you are doing the committee a service in bringing your best points forward.

I have taken most of the time, and I apologize to Senator Eagleton. I will run over and vote, and if you can take care of the questions, I will tell them you are coming over.

[Information supplied for the record follows:]

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93 1 that is the position that we take,

2 MR. OLSON: What -- what legislative --
3 it's hard to -- if I say lobbying, it's not going to be
4 broad enough.

5 What kind of legislative activities are
6 you folks involved in?

7 MR. DORSEY: We are involved in some grass-
8 roots lobbying. There are occasions when our newsletters,
9 to programs, advocate that they get in touch with their
10 legislators.

11 We engage in that way. We do have some
12 contacts from The Hill, which we utilize. There are times
13 when we are asked to come to D.C. to testify.

14 I usually -- well, during the times that
15 I have been Chairperson, I have bid for the Senate and
16 the House, both on authorization, and appropriations.

17 MR. OLSON: Is that the role Ahn Tu plays,
18 primarily, with respect to being in D.C.?

19 MR. DORSEY: Ahn is the person who does,
20 on an on-going basis, our work in D.C.

21 MR. OLSON: Do you want to add anything
22 to your role with respect to lobbying?

23 MS. TU: No, except to say that very little
24 amount of my time is spent on lobbying.

25 MR. OLSON: I had a feeling.

94 1 (Laughter.)

2 MS. TU: I do have to file my lobbying re-
3 port, and it is a matter of public record. And I have,
4 you know -- it is a matter of public record.

5 MR. OLSON: Okay, I think that's all I
6 have.

7 MR. OLSON: Oh -- I'll ask you this, too.
8 Have you folks made a contribution to the Coalition for
9 Legal Services?

10 Or, do you provide in-kind assistance, or
11 both?

12 MR. DORSEY: We have contracted with the
13 Coalition, to perform certain functions for the Project
14 Advisory Group.

15 MR. OLSON: Who per -- they perform the
16 services, or you perform the services?

17 MR. DORSEY: They perform the services on
18 behalf of our organization.

19 MR. OLSON: And, you pay them?

20 MR. DORSEY: Yes. By way of contract.

21 MR. OLSON: What are the services?

22 MR. DORSEY: In depth analysis of some of
23 the issues, some legal research, concerning issues which
24 currently face Legal Services programs, which we anticipate
25 will face Legal Services programs.

95 1 MR. OLSON: And, what kind of compensation
2 do you provide to them?

3 What type of compensation for the work that
4 they do.

5 MR. DORSEY: You mean, how much?

6 MR. OLSON: How much are you paying? Yes.

7 MR. DORSEY: I believe in the current year,
8 we are paying them \$40,000.

9 MR. OLSON: If -- since you're also in-
10 volved in the Coalition, let me just ask if that's not
11 a possible contradiction with what Berry had said.

12 Didn't Berry say that 98 percent of all
13 their money came from individuals, and that only 2 percent
14 came from non-individual contributions.

15 And, unless their budget were some several
16 millions of dollars, which may be -- I doubt it -- but,
17 that would -- where would the \$40,000. fit in, do you
18 know?

19 MR. DORSEY: Bill, I do not recall what
20 Berry said. I am not in the position to state what the
21 budget of the Coalition is, because I do not serve on that
22 Board.

23 MR. OLSON: Well, I -- yeah.

24 MR. DORSEY: So, that is a question whose
25 answer I don't have.

96 1 MR. OLSON: That may well be. She said
2 98 percent of all funding came from individuals. And,
3 if they get \$40,000. from PAG alone, then one would won-
4 der if she might have been speaking of contributions as
5 opposed to fee for service, or whatever, I don't know.

6 But, I think we may explore that further.
7 But, she doesn't have to answer, of course. It's a free
8 country.

9 Again, the only inquiry that I have, is
10 not what the Coalition's doing -- that's their business;
11 but, what they're doing with funds that are provided by
12 The Congress -- and, we do raise -- we do get into this
13 second level problem, since we give the money to the
14 grantees, they give it to you, and then you do something
15 with it.

16 I don't know if that's second or third
17 level, but it's certainly not direct. And, I'm not sure
18 the extent to which the statute applies, but I think
19 these are -- these again, are issues that are going to
20 be raised over the near future.

21 I appreciate your candor and help.

22 MR. McKEE: It seems to me that PAG of
23 all of the Coalitions and groups, is probably more --
24 other than the Client's Council, is more representative
25 of the Legal Services Community.

97 1 For example, when you have one director
2 from a large project, each of nine regions -- one from
3 a large project, and one from a small project, staff
4 attorney, para-legal, client; then you have a requirement
5 that one has to be a minority, and one has to be female?

6 MR. DORSEY: That's correct.

7 MR. McKEE: Okay. And, that includes
8 migrant and native American programs?

9 Now, it seems to me that the whole discus-
10 sion that we had on the Coalition, when I asked everybody
11 what can the Coalition do, that any individual group
12 couldn't do; and it seems to me that as you look at all
13 of the organizations, that PAG seems to be a bit more in
14 touch with the "grassroots of an individual program,
15 or in regions, or in various supports" than some of the
16 others might be, because that's -- you're a project dir-
17 ector yourself, and you're working with project directors
18 and staff attorneys and para-legals, which to me seems
19 a bit more representative of the census and the feelings
20 of actual Legal Services groups.

21 And, that was the point I was making ear-
22 lier, that everything you do, seems to be more-- seems
23 to be more to me, that kind of an effort of a coalition,
24 or a group. you see.

25 I would like to have you give us, within

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82 Dorsey: 1 The Corporation, I was of the opinion that had the Project
2 Advisory Group not existed, it would have to have been
3 invented by The Corporation, for the proper conduct of
4 business.

5 We attempt to be a direct link between
6 the field, and this Board. And, in the past, we have had
7 significant communication with this Board.

8 We look forward to the possibility of that
9 continuing in the future.

10 We would like to appear before you regularly.
11 We would like to work with your staff in developing po-
12 sitions, we would like to be heard.

13 Perhaps what I'd better do at this point
14 is to stop, and perhaps respond to any questions that you
15 might have.

16 MR. McKEE: Harold?

17 MR. DeMOSS: Always start on the left, huh?

18 (Laughter.)

19 MR. McKEE: I'm leftward leaning.

20 MR. DeMOSS: My -- you know what my first
21 questions are going to be -- what have you got in the
22 past, and what do you want next year?

23 MR. DORSEY: We do not receive anything
24 directly from the Legal Services Corporation. Our dues
25 is based on the allocation of Legal Services to field

87 1 : programs.

2 We would like to see an increase in that
3 allocation to field programs, which would increase our --
4 the base of our dues.

5 MR. DeMOSS: What is that formula, or that
6 math involved there, that you're talking about?

7 MR. DORSEY: The formula is \$115. per
8 \$100,000. of Legal Services Corporation funds. This
9 generates about \$180,000. a year in our dues.

10 MR. DeMOSS: And, is that purely volun-
tary on the part of those participating programs?

MR. DORSEY: It's completely voluntary.
As a matter of fact, those programs who refuse to pay
dues still get our newsletter, and we respond to them
in any way that we can.

16 MR. DeMOSS: Is it -- I guess I had it in
17 my mind, that the Project Advisory Group had some anal-
18 ogies, and that's all I'm going to say, to sort of a
19 union representative.

20 Do you subscribe to that? I mean, is --
21 do you vision your most important function, to be the
22 representation of the field personnel with this Board,
23 and the National office?

24 MR. DORSEY: No, we don't Mr. DeMoss. We
25 see ourselves, rather as a Congress of Legal Services

*See, see, see
to program
= 230,000 is correct*

88 1 people. And, we attempt to articulate, and focus the
2 issues that arise in Legal Services, give people an op-
3 portunity to discuss those, and hopefully come up with
4 some field consensus on the issues that appear in Legal
5 Services.

6 Most recently, I guess the steering
7 committee attempted to deal with fund balance problem,
8 and we did come up with a recommendation to this Board,
9 suggested by Dennison Ray, as to how fund balances should
10 be dealt with.

11 So, we do not attempt to be a union of
12 Legal Services people, except in the broadest sense of
13 the term union.

14 But, we do see ourselves as a Congress
15 of Legal Services people.

16 MR. DeMOSS: And, what are -- just as easy
17 as you can knock them off the top of your head -- what
18 are the types of issues that you speak in behalf of all
19 of the members of your organization on?

20 MR. DORSEY: Well, in the past, we have
21 been vocal on funding issues, on regulations, on legis-
22 lation, training, on para-legal issues.

23 Those, I would think, are the major issues.

24 It was interesting hearing the discussion
25 about the standards study, which took place this morning.

Prov. & G E K Joint Meeting (Indpls) October 16, 1982
 As we see it, it began when some issues

were raised around evaluations at a steering committee meeting, a couple of members of the steering committee decided that they would like to do some research on that.

We came to the Corporation, and said look, this is something that really should be done. A number of people in the field became involved, and a very good process took place, which resulted in the articulation of standards, which I would urge members of the Board to take a look at.

I think that that resulted in something that will be beneficial not only to Legal Services lawyers, but to lawyers anywhere, in terms of looking at the standards, in the civil area.

MR. DeMOSS: On the issues that you take a position on, how do you determine the sense, or feeling of the members on those issues?

I mean, is that -- take place at the three general meetings that you described?

MR. DORSEY: That's correct. The three meetings of the steering committee.

And, they are people congregate -- we attempt to meet in different portions of the country, so that people from those areas would be able to come in, and attend the meetings.

Senator EAGLETON. I have a few questions, and I think I can get them in before it is time to go.

The CHAIRMAN. Then if you will recess until I get back, we will finish the last three witnesses, and I hope those last three witnesses can keep their comments to 5 minutes each.

Senator EAGLETON. Thank you, Mr. Chairman.

Mr. Olson, I have a few brief, nonacrimonious questions for you. I hope we can get them in, in the time we have left, before the five bells go off.

You will remember over a year ago, or whenever it was, that you and other individuals were before this committee for confirmation. I asked each of the nominees, yourself included, if each of you believed in the Legal Services Corporation and believed in its continuance and that it served an important role. I think I asked each nominee to hold up his hand, and all did, if I recall. Do you still believe in the continuance of the Legal Services Corporation?

Mr. OLSON. I believe that was Senator Pell who asked us to hold up our hands. But you are right, the question was asked; and yes, I did. The question was: Do you support the proposal of the President to block grant this program. All of you who oppose it, please hold up your hand. At that time, I did. And at that time, I was committed to a program of reform. I believed that our Board, if we had a chance to do what we thought had to be done, could turn it around.

Senator, the fact of the matter is that I have had a change of opinion on this. I am not sure how far I have gone on it, but I can say that at a minimum, we have been unsuccessful in bringing about the reforms that I thought were essential. The Weicker amendment now precludes those reforms, as a matter of Federal statute. I have been more frustrated by the inability to effect reform and do what I thought was necessary in this than in any project I have ever undertaken.

All I can say now is that I would hope that this committee, in considering alternatives and reviewing authorization matters, would examine the alternatives that are less intrusive, less likely to abuse, less oriented toward the staff attorney program. For example, the Sachs report said we needed the staff attorney program in order to insure that law reform objectives are met, And that if we have to subordinate the individual needs of individual poor persons in order to effect law reform, then so be it.

I absolutely disagree with that philosophy. That was the philosophy Mr. McCalpin's Board adopted. All I can say is, I hope you study the alternative structures because I no longer believe this structure is sacrosanct. Tax credits, tax deductions, and block grants should all be under active consideration.

Senator EAGLETON. So you have had at least a partial change of heart since the time of that hearing, based on the experience during your tenure on the Board?

Mr. OLSON. Yes, sir.

Senator EAGLETON. Point two. You concentrated in your testimony on decentralization. In fact, the last answer that you gave to Chairman Hatch about this 4 percent and 96 percent of the budget of the central office vis-a-vis the local office. Is not decentralization a fundamental tenet of conservative Republicanism? Is that not what New Federalism is all about?

Mr. OLSON. If we could take this program and take the funds that were available, and make them available to State agencies along the lines of a block grant proposal, I think we would go a long way in that direction. What we have now, Senator—

Senator EAGLETON. That form of decentralization you like?

Mr. OLSON. What now we have is a mix, where we have no accountability. One of the major advantages of decentralization is to have accountability at a local level, where you can get a hold of people and say, do your job. Represent these people's interest. Make sure that the statutory objectives are met. What we have now is a circumstance where the national office purports to keep in line the local programs without the power to be able to do that. It has administrative costs on the national level. It has evaluative reports, for example, investigators going to the local programs and writing them up if they are not doing enough impact work. If they are spending too much of their time representing the individual needs of individual poor persons in divorces and other garden variety cases, I have seen reports where they have been written up in an adverse way. It boggles the mind.

We have the worst of both systems. We have funding at the national level, the appearance of accountability, no accountability and control at the local level. I would hope we would do it one way or the other, but accountability to the taxpayer is the key.

Senator EAGLETON. You, time and again, have referred to the evils of class action suits and lobbying. Let me pose to you the two examples that Mr. McCalpin used in his prepared testimony. He talked about the *Thompson v. Walsh* case in Missouri, my State, where the Department of Social Services, as we now call it, had been for years out of compliance with Federal statutes insofar as the payment of welfare benefits is concerned. In fact, we have even had Governors brag about that.

They had a raft of individual suits, with each litigant saying he will take his or her case up the ladder. And another case would go up the ladder. Is there any other way of coping with a matter like that, other than with a class-action suit, whether brought by a legal services attorney or, if we had some kind of a voucher system as Mr. Phillips suggests, a private attorney? If you took that condition to a private attorney, or if it were brought to you, what would your judgment be? What is the best way to resolve this matter: my filing 1,000 individual lawsuits or my filing a class-action suit?

Mr. OLSON. First, I have to say that the facts of the Missouri case are outside my competence.

Senator EAGLETON. Take as a given my brief statement of Missouri's sordid history with respect to this matter. I can be an expert on that.

Mr. OLSON. What I cannot understand, frankly, in those kinds of hypotheticals is if a single case is won against the Department of Health and Human Services, why the combined forces of the executive and the legislative branches do not work together to insure that whatever change there is ordered will be implemented. If there has to be a judicial solution, there are many vehicles available. There are public-interest law firms—

Senator EAGLETON. Is not a class action a legitimate legal remedy that private lawyers frequently utilize in private litigation,

totally out of the context of legal services? There is nothing shady about bringing a class action suit, is there?

Mr. OLSON. The fundamental problems that I have articulated with class actions, and consistently articulated with class actions, are simply these. The fact is that very often class actions are filed prior to the time the grantee lawyers take what I would consider adequate steps to attempt to resolve the dispute by other means. I think that is a responsibility that is on lawyers generally. I think that is a responsibility that should be on local legal services attorneys.

Second, I have had the objection that they result in a penchant for law-reform-impact litigation. It is a vehicle that too often is used in that area. Class actions, per se, are almost value neutral, and I, for one, understand the point that you are making technically. But I say that what we have to deal with—

Senator EAGLETON. It is not just a technical point. It is a very substantive point. It may be technical in how a case is styled, whether as so and so versus so and so.

Mr. OLSON. If I had to list my 10 most grievous, serious objections with legal services programs, class actions certainly would not be in the top 5, 6, or 7. I believe that the funding of liberal political action or any type of political action—I do not care if they were funding conservative political action—

Senator EAGLETON. Stick with this Missouri situation. This is a case against the State of Missouri for its unwillingness to comply with Federal regulations relating to the distribution of welfare benefits. I do not know if you want to call it liberal, conservative, strict constructionist, Hugo Black, William O. Douglas, Mrs. O'Connor—call it anything, but it is a very real case of welfare recipients not getting that which the Federal law says they are entitled to and which they are getting in 49 other States.

If you file, machinegun style, 1,000 cases and that does not finish the matter, do you file one class-action suit? I think the evidence and logic would say that the way to handle it is by class actions. Class-action suits are not dirty. I never was taught that in law school; I do not think you were either.

We will stand in recess. Senator Hatch will be back, and we will take up with other witnesses. If Mr. Olson would standby, I just have two more questions for him.

[Recess taken.]

The CHAIRMAN. Senator Eagleton?

Senator EAGLETON. Let us move on to lobbying. I have one question. I think there are various kinds of lobbying. Let us use the Missouri context again. Assume a nuclear-freeze resolution is before the St. Louis Board of Aldermen. Assume that somebody at the legal services office there says: "By God, I'm strong for the nuclear freeze." So he uses the office to produce a lot of letters and make a lot of phone calls to the St. Louis Board of Aldermen in favor of the nuclear freeze. To me, that is clearly wrong; if there is any doubt that it is wrong, in terms of how the present Federal law is worded, it ought to be made abundantly clear that it is so extracurricular as not to be considered, by the remotest stretch of the imagination, to be considered within the purview of the duties of the legal services office in St. Louis.

But let us use another McCalpin example of lead-based paint. Suppose there are 100 cases in the office, with infants or adults affected by lead-based paint. The city ordinance is inadequate with respect thereto. The St. Louis Building Inspectors' Office is inadequate with respect to the problem. So the legal services staff gets together and says: "Better than filing a series of individual cases, we ought to see if we can get this remedied down at the Board of Aldermen." Now, I see lobbying in that context clearly related to specific clients in the office to be a legitimate function.

That is my view. What is your view with respect thereto.

Mr. OLSON. I am sure you have heard this before, but my view is Thomas Jefferson's view, that to compel a man to furnish funds for the propagation of ideas in which he disbelieves is sinful and tyrannical. There are many views as to what the best interest of the poor is in any issue. For example, rent control—that is a lobbying issue. Should legal services lawyers be allowed to lobby in support of rent control. I know many people, economists particularly, who have written up very good studies on the subject that rent control is not in the best interest of the poor to get adequate housing.

Senator EAGLETON. This will bore you; I am opposed to rent control.

Mr. OLSON. You and I agree on several things, abortion and rent control being two.

Senator EAGLETON. Let's keep it quiet, or it will be mutually ruinous.

Mr. OLSON. I will try not to let anyone know. I would say that we have a very fundamental, moral, philosophical problem when we cross over into the lobbying arena. I would draw a very clear line. In the area of class actions, I think you can make a persuasive case, Senator, but with respect to lobbying, I believe that one cannot make a persuasive case. The case is not at the level of what is in someone's best interest, or how they can accomplish something more efficiently. It is a simple principle, and it is a fundamental principle of constitutional democracy that we should not be funding advocates in the political arena on any side of a controversial public issue.

I would hope that would be the position of the Congress. Even when you in the Congress have adopted restrictions and we on the Board have adopted regulations, they have been ignored. I now have found an example of some California legislators who have written their fellow legislators saying: The new legal services regulations require authorizations from legislators seeking assistance from local programs, so will you fill out, in blank, the following authorization forms for any issues that pertain to the interests of the poor. You, a State legislator in California, can with this form now authorize the local programs in California to lobby you, provide you with all the information you need, with respect to all the issues that affect the poor people they represent.

Those kinds of things are going on all the time. That is a sham. It is an attempt to circumvent the restrictions the Congress passed and the regulations we passed. I would submit that the record of the corporation on this issue is very poor. I would hope on the principle underlying lobbying that if we disagree, my side would win.

Senator EAGLETON. Finally, fund balances, which were discussed by Chairman Hatch with Mr. McCalpin and, I think, with you, Mr. Olson. When Chairman Harvey was on the Board, he had a good deal to say about it and the \$41 million figure and so on. When it turned out that some of the biggest fund balances were in the judiciary programs, he became somewhat less irate. Interestingly enough—and you were here all day today, as were these other witnesses; they have all been very patient, and we are grateful to them for that—when Mr. Bogard was here, he had five or so people with him. Mr. Gregg Hartley was the end man at the table. He now has one of the highest ranking jobs in the agency, in the Office of Field Services.

When he was in Springfield, Mo., as Director of Legal Aid, a judiciary program, he had a fund balance of 81 percent, one of the highest in the Nation. Now, if fund balances are, per se, sinful, and Chairman Harvey can get all excited about them and everybody gets all excited about them, why would they promote—I ask rhetorically, and you need not answer this because it was not your decision—one of the highest fund balances in the country, from Springfield, Mo., to Washington, D.C.?

I do not know how sinful these fund balances are, but if they are as sinful as some allege, they then should not be the basis upon which someone is promoted. But I ask it and excuse you from answering it because that is not your dilemma.

Mr. OLSON. I appreciate that. It is, perhaps, the only one that is not my dilemma. I would like to offer some very quick observations on that. No. 1, perhaps one of the motivating factors is that Mr. Hartley's program, immediately after we on the Board discovered the problem, returned to the Corporation something in excess of \$200,000 to be made available to help poor persons in other parts of the country where needed. Second, the judiciary projects are the projects that have the best case to be made for maintaining fund balances. The reason is simply the manner of payment. If you have a staff program, you pay every week, or every other week, or twice a month. If you have a judiciary program, largely payment is at the time of case closing, so you have to maintain a larger reserve.

In that case, there is a greater rationale, but even there I would not tolerate the rationale. I certainly would not accept Mr. McCalpin's comments before, where he said that the reason the fund balances were being maintained was because of uncertainty with respect to what OMB and the administration was going to do. We were told by persons on the staff that some of these fund balances date back years, and years, and years, and they were maintained because the Corporation unwisely gave excessive funding when it originated a program. It would give it a full year's funding, and the program could not possibly know what to do with it because on a startup basis they simply did not need the money. They would keep it bankrolled and continue to use the interest.

By the way, one of the interesting legal theories is that this interest is not given to them by the Corporation, and they can use it for otherwise impermissible purposes. There are many such problems, and I appreciate the opportunity to answer your questions.

Senator EAGLETON. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Eagleton, and thank you, Mr. Olson for the time you have given to us today.

Our next witnesses will be a panel consisting of Mr. Jonathan Weiss, Ms. Nelwynne Hollie, and Mr. Robert D. Raven. We will begin with you, Mr. Weiss.

STATEMENT OF JONATHAN A. WEISS, ESQ., DIRECTOR, LEGAL SERVICES FOR THE ELDERLY POOR, NEW YORK, N.Y.

Mr. WEISS. I have no prepared statement, but I would be glad to state one direct concern I have. I am a neighborhood lawyer, and one thing that seems to be lacking from this whole discussion is that simple proposition, the essential idea everybody agrees on, which is that there are certain problems poor people confront which can only be resolved in the courts and in administrative agencies by proper advocacy.

The consequences of this concept are that when you provide legal services to poor people, what you have is a new class of client represented at least in a traditional way. What the consequences of this are, socially and politically, sometimes cause debate. But that essential point remained clear.

When we talk about evaluating legal services lawyers, it should be made clear that we are talking about lawyers, not about a corporation, not about an agency, in main or perhaps even in principle. What we ask is that any scrutiny be about how we practice law as lawyers. We have cases, we have clients. Our job is to do our best under the canons of ethics to represent our clients properly. So questions such as the pursuit of class actions involve our duties not only to our clients but to the courts. Questions as to what the consequences are politically should be irrelevant, once we in fact have properly established the attorney/client relationship. What is done with the money provided us is that it should be provided in order to allow us to properly practice as attorneys.

I would suggest that when this committee looks into how the corporation in turn looks into the way Legal Services operates, it always should keep that idea foremost—that is, that we are attorneys, representing individuals. We wish to be judged by those standards, and we hope that when we do things that are wrong, we are held accountable the same way other attorneys are. This would mean that all the agencies which look at attorneys are involved: the courts, the ethics committees of bar associations, and other attorneys, and of course, ultimately our clients.

In that context, I believe there is a functioning means of an accountability and procedure. That principle, I think, should always be kept as the operating principle in any scrutiny. In terms of that, we then can evaluate how a corporation should be structured to in fact fund, evaluate, reprimand, criticize, or suggest local programs who should function to provide a conduit, a context in which clients can establish the appropriate connection with the appropriate attorneys. I would just like to make sure that is in focus.

The CHAIRMAN. Thank you so much, Mr. Weiss.

**STATEMENT OF NELWYNNE HOLLIE, DIRECTOR, CENTRAL
MINNESOTA LEGAL SERVICES CORPORATION, MINNESOTA**

Ms. HOLLIE. Thank you, Mr. Chairman. My name is Nelwynne Hollie. I am a board member from the Central Minnesota Legal Services program. I also have been a client of that program on occasions over the last several years.

I have some particular concerns to bring to this committee about the Legal Services Corporation, but first I would like to tell you a little something about my program in Minneapolis.

In my program, we received our 25 percent cut as did other Corporation grantees. Our project director and managing attorneys spent some time looking at what other funds were available in our city. Our executive director brought to our board plans to try to raise funds to offset the loss. With the help of the Minnesota State Bar Association, the Hennepin County Bar Association and other interested people, the State supreme court was persuaded to enact a surcharge on filing fees program. These funds will be available for legal services programs in the State, to try to offset some of the cuts. However, those funds will run out in 1985.

In addition to that, our State legislature recently passed an IOLTA bill. We do not know at this time how much money this is going to generate.

In addition, about 2½ years ago, the executive director, working with some of the larger law firms in our city, was able to set up a foundation. We just had our second annual foundation dinner to raise money for the Legal Aid in Minneapolis. But again, this is peanuts compared to the money we lost. In 2 years, in actual dollars that we have been able to draw down from that fund, have been less than \$100,000.

We have suffered a heavy loss in staff. We lost, throughout the central Minnesota program area 25 percent of the attorneys. We are down to 41 attorneys, and we have a clientele of about 80,000 people. So I am particularly concerned that the Congress appropriate some additional dollars for legal services in our community.

I received a copy of the bill, S. 1133, that has been introduced into the Senate. One of the things that I would like to make a recommendation on concerns the governance of, the Legal Services Corporation. S. 1133 contains new requirements that persons nominated to that body be changes supportive of the act and be supportive of the continued funding of access to the legal system for poor people. We ask you also to consider, insuring that the eligible clients on that board, be persons who have actually lived in poverty and experienced it so that they can bring to that board the perspectives of people like themselves. It is very difficult to bring into a debate something that you may have read about rather than experienced, and we think the value of having clients on the Corporation Board is immeasurable.

At the local level, clients are constantly concerned that their legal services programs are not able to do enough. So it is interesting for me to sit and listen to complaints that Legal Services do too much. We spend considerable time with our attorneys asking them to do more, so I do not understand where the problems are coming from. There are just so many problems out there and so many poor

people that it seems if we ever really want to have justice, we have to go for it. That is, fight to have the current restrictions removed. I am not sure that people who want to restrict the programs from going to the State legislatures to ask for a change in a law understand that sometimes legislative advocacy is the only way to resolve the many, many problems.

We are deeply concerned in my local area about this restriction. A case in point. A group of citizens, low-income people, were trying to get a bill through the State legislature this year to prevent the need for utilities shutoff. At one point, someone from the State CAP Association offered an amendment that residents of public housing should not be eligible for any assistance. This person should have been aware that every year our State legislature has to appropriate additional utility money for people who are living in subsidized housing because the Federal money no longer covers it.

So even in our State agencies that are there to assist the poor they sometimes do not really understanding or are not going far enough to find out what the real problems are. At that point we had no lawyers with us because our legal services program could not go with us. So we had to spend a lot of time trying to get information to give to the committee in order to dispute the exorbitant amount of money that the CAP claimed it would cost if people in subsidized housing were included. Also, to bring to the attention of the legislature that in most cases public housing authorities do not set allowances that begin to cover the actual utility cost.

The CHAIRMAN. Ms. Hollie, could I interrupt you for just 1 second, and I apologize to you, Mr. Raven, but I need to take one call in here. I will be right back.

[Recess taken.]

The CHAIRMAN. Ms. Hollie, could you finish in about another minute?

Ms. HOLLIE. OK. In fact, I would prefer to respond to your questions, but there were a couple of other things from my prepared statement that I wanted to highlight. One of those is to ask this committee to take a look at the recent memo that was sent out to field programs from the director of field services, Mr. Gregg Hartley. In the past, the Corporation's regulations have allowed clients in the community to select attorney members for the local board of directors. A lot of programs have provided for that in their bylaws, maybe one attorney or two attorneys. Now the Corporation, based they say on the continuing resolution, has changed its policy. Mr. Hartley has specifically directed that clients may no longer participate in selecting attorneys to serve on local legal services program boards. We would like for the committee to help us clarify that. We think that is really important.

The CHAIRMAN. Thank you. I appreciate that.

[The prepared statement of Ms. Hollie follows:]

STATEMENT OF
NELWYNNE HOLLIE
BEFORE THE
COMMITTEE ON LABOR
AND HUMAN RESOURCES
UNITED STATES SENATE

May 4, 1983

Mr. Chairman, members of the Committee.

My name is Nelwynne Hollie. I am an eligible client and a member of the Board of Directors of the Central Minnesota Legal Services Program. I very much appreciate your invitation to testify on the reauthorization of the Legal Services Corporation (LSC).

The ability of low income people to have access to our system of justice is an integral part of our national values. Such access is made possible only through the continuation of a viable, strong and independent Legal Services Corporation. This Committee is a vital ingredient in the bi-partisan effort to make this need a reality.

I would like to take just a moment to provide you with some information about me. I am the parent of three teenage children and one who has reached adulthood. I am active in local organizations concerned with issues relevant to low income people such as subsidized housing, energy conservation, utilities and administrative benefits for the elderly. I have, in the recent past, been served by the Central Minnesota program. I also serve on the governing body of the National Employment Law Project, one of the LSC funded support centers. I am currently the President of the National Clients Council, whose members are persons concerned with the delivery of civil legal services to low-income people.

Thus, my testimony reflects my experience as a consumer of services provided under this Act; my exposure to the needs, concerns and aspirations of others in my community; and, the problems facing those who set policy - both at the national and local levels - and allocate the limited resources available to service providers.

I will try to provide you with information about the current situation in, and needs of, the legal service community, from the perspective of an informed client. I also will take the opportunity provided by your invitation to comment upon what appear to me to be what the client community feels are the most critical issues - governance of the Corporation and local programs; restrictions on the scope of and forums for representation; delivery systems; and, of course, funding.

The positions I take and the issues I highlight are certainly not presented to you as the unanimous voice of the client community. However, I have been fortunate enough to have had the opportunity to talk with the clients from many areas of the country and I do think my testimony will reflect the feelings of a great many low income people involved with legal services at the national, state and local levels.

THE LOCAL ENVIRONMENT

I am one of the more fortunate client board members. Central Minnesota Legal Services is a good program. We have a dedicated staff, experienced managers and a hard working board of directors. Yet, the last two years have been devastating.

It is not an exaggeration to say that a prime activity of the board and our Executive Director during this period has been to find resources. Minneapolis is a city with a concerned bar, large companies with a history of corporate giving, and a number of private philanthropic agencies. By "running hard", the program has almost been able to make up for the dual realities of reduced resources from the Legal Services Corporation and increased demand for services by our traditional clients and the so called "new poor".

We are deeply concerned about the funds we have raised since they are of distinctly short term duration. The State Bar Association has helped us secure filing fee surcharge legislation - but this bill contains a sunset clause and will terminate in FY '85. We have entered into a \$175,000 contract for services with the county government for the years 1982 and 1983. There is no certainty that the County will be able to find the funds to continue this contract beyond that time. We will share in a state-wide grant program initiated by a consortium of foundations. Again, we are not sure that this money will be available after this year. Thanks to the efforts of the Hennepin County Bar Association, private attorneys have instituted a multi-year fund raising effort with a goal of \$150,000 but we do not know how successful this will be or how long it will last.

There are some activities which have the possibility of longer range duration. Over 500 private attorneys are doing intake in our offices and accepting referrals on a pro-bono basis. Further, we anticipate Supreme Court approval of an IOLTA (Interest on Lawyer Trust Accounts) program in the near future.

Yet, all of these efforts have not been sufficient to allow us to keep pace with the demand or retain our staff. I would like to give you a few examples of the current situation.

The Advocacy Unit of the Hennepin County Welfare Department attempts to resolve disputes between the agency and client. Where that proves not to be possible, referral is made to our legal services program and, under the terms of our contract with the County, we provide representation. Referrals from this source alone were up 60% in 1982 as compared to 1981. A significant portion of these cases are instances in which the elderly are seeking medical assistance benefits. Sometimes the matter is as seemingly simple as a denial of funds for a wheel chair or an air conditioner (where the clients medical condition requires a controlled environment). Yet, were we unable to accept these cases, the only alternative for many of these persons would be admission to a nursing home. You are aware of the higher fiscal cost to the community and psychological impact to the individual which are consequences of such action.

So great is the increased demand on our Family Law unit that we have been forced to limit intake to one day a week. The calls start to come in long before the 8:30 a.m. starting time for staff. People just call, let the phone ring and wait for someone to answer. Usually, by 8:45 staff is forced to tell callers that no further appointments can be given until the next week.

Disturbingly, much of the demand reflects a sharp increase in spouse and child abuse. While we can not scientifically validate it, we believe that the pressures of the economy are a major causative factor. Again because of the increased case demand, the only domestic cases our rural offices are accepting are abuse cases. In our Minneapolis office, for other family law matters, the waiting list is a minimum of 6 months.

Prior to the cutback in funds, our housing unit spent a significant portion of its time on the enforcement of housing codes and seeking remedies for tenants in substandard housing. In 1982, over 80% of the staff time was spent defending against evictions and foreclosures. We were forced to try to protect the residency of even those in substandard housing since all of the City's emergency shelters were full.

The program's work in consumer matters is now limited to representation of defendants. Clients with affirmative claims regarding illegal sales practices or truth in lending violations can no longer be served. All of our efforts are going into providing representation to those faced with problems such as garnishments, repossessions or utility shut offs. One instance which was brought to my attention was a case in which a collection agent had managed to seize the funds of a Social Security recipient. Before turning to our program, she had tried to get the collection agent to release at least some of the money so that she could purchase food for herself and her children. She was told to, "go sell some blood."

This woman is not the only person in Minneapolis to get such advice. I enclose an advertisement from Insight, a local newspaper distributed free from door to door in low and moderate income neighborhoods in Minneapolis. This ad urges a reader who may be short on the



RENT DUE?

Don't be caught short at the end of the month. Become a plasma donor today! \$10 is paid for each donation and you can donate twice a week (but please wait 72 hours between donations). That's up to \$95 a month we'll pay you. So you can pay your landlord.

**Associated
Bioscience**

Plasma Donor Center

1552 E. Lake St. 721-6464

Open Mon. & Thurs.

7:30 a.m. - 8:00 p.m.

Tues. Wed. & Fri.

7:30 - 6:00 p.m.

Sat.

8:00 a.m. - 6:00 p.m.

**\$2 Bonus to Qualified New
Donors with this Ad**

licensed & inspected by the FDA

rent money to make up to \$95 per month by selling blood twice a week. As you can see, there is even the extra added attraction of a \$2 bonus for the first time donor.

There is every indication that our staff, confronted by the many instances where they must deny assistance to those in need and faced with uncertainty as to their own future, burn out much more rapidly and stay for shorter periods of time. We have lost the equivalent of 45 years of attorney experience in our central office and the equivalent of 64 years experience in the program as a whole.

Despite all of this, I still say I am one of the lucky client board members, and I am. I say this because the situation is so much worse for those programs where there are fewer resources to be called upon or where the spirit of cooperation is less well established. This is true in other areas of my state and clearly the case in many parts of this country.

I have listened to clients whose programs have had to close all of their neighborhood offices and where intake has been curtailed for months at a time. I have seen experienced project directors totally removed from other managerial functions in order to deal with the retrenchment process and the need to raise funds. All projects, mine included, have been forced to risk planning for the future based upon the expectation that the LSC funding level will significantly improve or that funds from other sources will continue at current levels. This is not the way to plan, manage or to supervise. This is not the way to insure the quality of representation clients have a right to expect and you, the Congress, a right to require.

The local programs are certainly being negatively impacted by the realities in their communities and the diminution of resources. They are, however, also impacted by what has happened at the national level.

GOVERNANCE

Previous testimony presented to the Congress by members of the client community has, in part, focused on the exemplary operation of the Corporation's governing body. Although we did not always agree with their actions, we did feel that they were acting, within the letter and the spirit of the enabling legislation, to maintain a program of high standards. We were pleased by the heterogeneous makeup of that body - it was diverse in political philosophies, ethnicity, economic levels, sexual composition and geography. As the Corporation matured, its Board increasingly became a cross section of our total society.

These past board members had strong ties to the client community, the organized bar, minority and women's groups. They had increasing credibility with the Congress and had established good working relations with local programs. Under their guidance, LSC was not always a step from disaster. In brief, they were moving the Corporation ahead to a point where acceptability and cooperation, rather than controversy, were the hallmarks. Congressional and public support for the Corporation was at an all time high level.

Then came a series of events which started on December 31, 1981. It was almost as though a master strategist had formulated a Machiavellian plot designed to thwart the will of the Congress and, once and for all, eliminate government funding for civil legal services. Clients watched as moves were made which circumvented the normal appointment process. We saw the harmonious functioning of the Board destroyed by actions of a few of its members. Reports were heard of intrusions into day-to-day operations which appeared to be deliberate attempts to alienate the Board from its staff. Communications were sent which undermined the staff's authority over program recipients. Efforts were made to have the National Clients Council and its affiliates be the "judas goat" to give truth to the myths about abuses by local programs - and when that attempt failed we saw individual board members try to pit client against client. Through the media, the public was provided with constant images of an agency in apparent total disarray.

It appeared that this was all designed to cause the Congress, out of despair and desperation, to throw the whole problem into the lap of State governments.

There, the bones of this most valuable tool for the protection of low income people, could be picked clean in 50 separate processes. In the eyes of the client community, it matters little if there was such a plot - if LSC is allowed to continue as it has in the last year - the end result may well be the same.

Clients are pleased that the bill before this Committee, S. 1133, takes steps to insure that we do not ever, by accident or design, have the same experience again.

We particularly appreciate the action taken to insure that future directors are persons who are demonstrably supportive of the Act - people who have a reasonable history of involvement in activities which are relevant to the struggle to achieve the stated purpose of this law. Such criteria for membership on the LSC Board, has, up to now, only been part of legislative history. Similarly, we are most supportive of the limitations imposed upon the capacity of an unconfirmed board to take action.

There is one additional step which clients feel should be taken in this regard. The criteria set forth in S. 1133 deals well with the attorney members of the Corporation Board. We would suggest, however, that there needs to be greater assurance that the client members are persons who have been involved in their community. Only those low income persons who have been part of a joint effort can truly bring to the Board's deliberation a perspective broader than their own individual life experience.

We would also ask that you use your oversight capacity to insure that the present and future directors of the Corporation employ a staff which is committed to the purposes of this Act and qualified to provide the needed day-to-day leadership and management. Within the last several months, the Corporation has undergone a turnover of staff which is not only unprecedented in its own history but also unusual for any entity. Most of the key personnel have resigned, been relieved of positions of authority or been terminated. In some instances, the persons involved were given only hours to clear their desks and depart. In addition, job descriptions have been rewritten and public posting procedures have been altered.

The Corporation is not an executive branch agency and, therefore, is free of the usual external review of its personnel policies and practices. The Act, for the most part, is silent on standards to be used by the agency with regard to the qualifications to hold individual positions and the employment of minorities and women. Compliance by the Corporation is a strictly internal matter.

We would, therefore, most urgently request that the Committee inquire, in depth, as to LSC's adherence to its previously established posting, interviewing and hiring policies; its compliance with its affirmative action goals; the staffing of its office of Equal Employment Opportunity; and, whether, in direct contravention of the Act, political tests are being used when applicants are screened to fill vacancies.

LOCAL GOVERNING BODIES

Just as the composition and commitment of the LSC Board are essential elements of an effective national program, so to is the make-up of local governing bodies. Congress has wisely required that LSC grantees be independent non-profit entities governed by local boards of directors. These boards have the demanding task of running an efficient and effective legal practice or, if you will, a "law firm". This "firm" is a specialized one which must be knowledgeable about, and responsive to, the needs of a particular segment of society - low income people.

There are many local boards which contain a mix of dedicated attorneys and informed clients who have acted to insure that their programs are accountable and have an effective delivery system tailored to local reality. Such programs have appropriate quality control mechanisms and provide the full range of representation allowed by law.

Some members of the Congress are concerned about who shall have the authority to appoint the members of these local boards. We do not take serious exception to the provisions of P.L. 97-377 which require that the majority of the board members be appointed by bar associations. We believe that, in some instances, this may provide a vehicle for an increase in the number of attorneys providing pro-bono services and strengthen support by the bar for the

continuation of this vital program. We do feel, however, that there is a need to insure that minority and women's bar associations are participants in this process.

If the Committee is going to consider the changes in appointing authority mandated under P.L. 97-377, then the Corporation's regulations provide language which you might wish to consider incorporating into the statute. The regulations, at Part 1607.3, state:

(b) At least sixty (60) percent of a governing body shall be attorneys admitted to practice in a state in which a recipient is to provide legal assistance, who are supportive of the purposes of the Act and have interest in, and knowledge of, the delivery of quality legal services to the poor. [Emphasis added]

Until amended in January, 1983 in order to meet the requirements of P.L. 97-377, the regulations at Part 1607.3 also stated:

(c) The attorneys shall be selected from, or designated by, appropriate Bar Associations and other groups, including, but not limited to, law schools, civil rights or anti-poverty organizations, and organizations of eligible clients. [Emphasis added]

We believe that the continued ability to have attorney members of local boards be appointed by those who the program was designed to serve is not only appropriate but highly desirable. We know of no reason why LSC did not include this language in its amended regulation or why it chose, in a follow-up memorandum, to rule out such client appointment. We would appreciate action on your part to clarify the fact that such a decision at the local level would not be contrary to Congressional intent.

DELIVERY SYSTEMS

The client community is struck by the continued debate over the most appropriate and effective delivery system. Advocates of major change in the

delivery model argue against the currently predominant staff attorney model on highly suspect grounds. These critics would have us forget that the choice of delivery systems is made at the local level by boards dominated by persons who are in the private practice of the law, who know local law and custom, who are aware of the delivery options which are available, who examine the local programs' allocation of resources and by clients who are in a position to offer informed expressions of what their local communities desire.

JUDICARE

Clients find it interesting that the oldest and largest judicare programs have found it necessary to add staff components. We find it equally instructive that staff programs - even before there was a national policy - had, where circumstances dictated, used compensated private attorneys. Experience has amply demonstrated that the great diversity of this country requires flexible planning - at the local level - if effective delivery is to be achieved.

The client community is often outraged by the arguments of patronizing judicare advocates who assert that, left to our own devices, we would choose delivery models solely dependent upon services from private practitioners. Such advocates assume that the clients who sit on the boards of local programs are either uninformed or ineffective. Clients may lack wealth and may live lives filled with constant crisis - but, providing we have access to accurate information, we are fully capable of determining what is in our best interest. If the staff attorney model or other locally determined combination of systems did not work for us we would have long since pressed for change in hundreds of communities across this country.

My experience has been that clients served by judicare programs are kept apart from their peers. Seldom are they given the opportunity by their programs to learn from, or exchange information with, other clients. Rarely are they participants in training sessions or meetings of Client Councils and similar organizations of low-income people. In fact, at most client sponsored activities, there are no representatives from judicare programs.

When I have been able to meet with clients from judicare programs, I have found them generally uninformed about the activities of the local program, the requirement that there be local priority-setting, the basis for their program's allocation of resources or aware of the full spectrum of substantive area representation which legal service programs can undertake.

There is one other experience in the lives of poor people which makes us wary of judicare - that is medicaid/medicare. Begun as a noble effort to make health care available to all, these programs have now become enmeshed in constant controversy over the spiraling fees paid to the medical profession. No poor person ever was enriched by such fees - yet through co-payment requirements and other cost control mechanisms - we have become the victims. We do not need this same experience in legal services.

SLIDING FEE SCALES

On this issue, I can be brief. As a client I can tell you that no one who is trying to live in 1983 on benefits which were calculated on less than 100% of the cost of living, as determined a year or more ago, is ever going to recommend that clients be required to pay a fee for services. The same is true for those on fixed incomes who have watched their meager savings and/or retirement benefits eroded by inflation. Faced with the need to purchase food and shelter, low-income people would simply be forced to forego the "luxury" of securing legal help in even the most dire circumstances.

PRO-BONO REPRESENTATION

The past several years have seen an appreciable and most welcome increase in pro-bono activities directed toward the client community. As I indicated previously, in my area more than 500 attorneys are involved in our pro-bono program. As significant as this figure is, we must examine it a bit more closely. It is anticipated that more than 90% of the persons served by the pro-bono panelist will be in the, "advice only" category. Further, experience has shown that contested matrimonial matters are cases which private attorneys will not readily accept on a pro-bono basis. Similarly, private attorneys will not handle appeals of welfare and SSI cases or undertake matters relating to public housing.

Even, as is the case in my program, where there is a good pro-bono effort underway, clients feel there is some need for Committee inquiry. To date, questions concerning quality control, accountability to the client community and the scope of representation have not been adequately addressed.

Further, we are concerned about a trend whereby local legal service programs limit the matters referred to private attorneys to those which the program has traditionally undertaken. The involvement of private attorneys should mean both an increased ability to meet crisis needs, and the potential to bring to bear new efforts to improve poor people's lives. We would hope that the Committee would encourage the relationship between local programs and pro-bono panels to be one of true cross-fertilization. A relationship where both groups of attorneys learn from each other thereby enhancing both short and long term delivery resources for the poor.

We were particularly interested in testimony presented to your counterparts in the House of Representatives on April 14, 1983 by Mr. Robert L. Hill of the American Corporate Counsel Association. In his testimony, Mr. Hill cited an example of an insurance firms involvement with a community self-help group in New York's South Bronx. Through that firm's corporate counsel major assistance was given in taxes, real estate appraisal, mortgage financing and other issues critical to the groups efforts to rehabilitate existing buildings in an area with a critical shortage of standard housing units.

We think that pro-bono participation will be enhanced if private attorneys are encouraged to use the expertise applied in their every day practice rather than always being expected to take on a new set of skills. We know that the client community would benefit if this were done.

I would like to make a final comment regarding delivery systems. The Corporation submitted to the Congress, in June, 1980, the results of a multi-year study of a variety of delivery systems. S. 1133 incorporates the results of that study in this reauthorization. Clearly, such guidance to the Corporation and local governing bodies is helpful as they make resource allocation decisions.

RESTRICTIONS

Restrictions on who may be represented, the substantive areas for which representation may be provided or the fora that may be used to achieve the clients' goals are part of a vicious cycle which should be brought to an end. Each time client recourse to the courts has led to what a more powerful segment of society sees as an adverse effect, there is an attempt, by some, to restrict our access in the future. The very achievement of the purposes of the Act results in attempts by some to insure against future success.

Clients now, as in the past, ask the Committee to remove all constraints on the representation of eligible clients by legal service attorneys. We recognize that this goal will most probably not be achieved and that past restrictions in this Act will remain.

We do, however, ask that no further restrictions be imposed. To do so would only intrude more deeply into the client/attorney relationship, interfere with the independent professional judgement of attorneys and put a chilling effect on zealous advocacy. New restrictions would only further undermine the ability of programs to protect our rights and property and diminish client confidence in our justice system as a viable way to resolve disputes between parties.

CLASS ACTIONS

Although S. 1133 would still permit programs to use class action remedies where appropriate, the additional requirement that, "... reasonable efforts to resolve the adverse effects of the policy or practice without litigation have not been successful . . .", does cause us some concern. The language carries with it the implication that programs do not already take such steps where it is appropriate to do so. The current statute and regulation require that local boards of directors establish policies governing the bringing of such cases. Our experience has been that there is acute recognition of the additional resources bringing a class action would require. However, whenever our program has used this form of remedy, it has been because the economical and efficient delivery of services has demanded it.

In Minnesota, some 13,000 persons were impacted by the refusal of the Veterans Administration to obey a court order which had been in place for over 6 years. Our program brought a single class action which resulted in state-wide compliance.

It is always difficult to find suitable foster home placements for minority and exceptional children. The Minneapolis Department of Welfare, at one time, made a practice of cutting off foster care benefits, without prior notification. This was making it almost impossible to find willing foster parents. Again, a class action suit was brought which greatly relieved the problem.

REPRESENTATION OF ALIENS

We are pleased that S. 1133 does not include the prohibitions against the representation of aliens which were included in P.L. 97-377. Clients find it particularly repugnant that there is an effort to preclude representation of all but a small portion of those who seek refuge in a country which was built with the sweat of immigrants from around the world. It is difficult to explain to a person fleeing from a brutal and repressive government known for its violations of human rights, the inconsistencies of the State Department process by which one becomes a protected non-citizen. I hope no Haitian ever asks me why she can not be granted asylum while a Chinese tennis star can.

There is an old passage which comes to mind - I am sorry that I can not recall the author.

In Nazi Germany they first came for the Communist and the Jehovah's Witness, But I was not a Communist or Jehovah's Witness so I did not speak up. They came for the Jews and I did not speak up because I was not a Jew. They came for the Trade Unionist and I did not speak up because I wasn't a Trade Unionist. They came for the Catholics and I did not speak up because I was a Protestant. Then they came for me and by that time no one was left to speak up.

Citizenship should not be a criteria when a person is going to be evicted, is being deprived of property or is being cheated out of justly earned wages. Programs should not have to risk injury to the client/attorney relationship by asking every applicant to establish his/her citizenship status. Further, such inquiry has the potential to be an administrative nightmare - demanding special training for intake workers, new and extensive record keeping systems, and inquiries which may lead to ethical conflicts of considerable magnitude.

LEGISLATIVE ADVOCACY

Access to justice in this country today requires more than access to the courts. Increasingly, the legislative process has become the vehicle used to avoid disputes and delineate relationships within the society. An example of this can be found in the efforts to alter the federal/state relationship with regard to the administration of many programs developed over the past several decades.

The Omnibus Reconciliation Act of 1981, P. L. 97-35, repealed more than 90 previously enacted statutes and untold number of regulations. It required the enactment of considerable new legislation at the state and local levels, and, the promulgation of new regulations at every level. Clients needed assistance in analyzing the Reconciliation Act and the proposed laws and regulations. Such analysis could only be done by those trained to do so. We needed the capacity to have advocates, acting in our behalf, as an on-going resource to the legislator during all aspects of the process. State legislators (many of whom are engaged in other professions) have, in the main, fewer staff members than do their counterparts in the Congress. The response of legislators and administrators to the Corporation's proposed 1982 amendments to the regulations on legislative and administrative advocacy provides ample evidence of their strong reliance on legal services programs.

Those opposed to legislative advocacy by legal services programs often argue that taxpayers money should not be used for such purposes. Clients suspect that this is simply a smoke screen to cloud the real issue. We know that the Justice Department, using taxpayer's money, each year submits, in behalf of its client, the executive branch of government, hundreds of recommendations for legislation. We know that the same is true for Attorneys General for each State.

We know that the same process takes place at the county and local levels. Clients also know that most state and local governments, at taxpayers expense, maintain staffed Washington offices for lobbying purposes.

The suggestion is sometimes made that legislative advocacy (and class actions) can be undertaken by, "other advocacy groups". This, of course is true - other groups can, and sometimes do, take up causes which are important to low income people. But, these "other groups" tend to be national in scope, with national agendas set to achieve some national purpose. The "other groups" are not poor peoples' groups. Decisions are made by their directors in accordance with the priorities they see. It is only through local legal services programs that clients can determine what legislative priorities should be pursued and determine what final goal will be most beneficial in our community.

Prior to the inception of legal services programs, low-income people had few, if any, effective vehicles to present counter-arguments or take affirmative positions before legislative bodies. Rent control, zoning changes, inadequate services in our communities might well have gone unaddressed from our perspective without legal representation at the local legislative level. Opponents of this form of advocacy on behalf of poor people may only wish the Congress to restore the imbalance of the past.

Each legislature establishes, and enforces, its own rules for those who lobby. The present Act goes further and is very specific in setting forth the circumstances under which legislative activity can be undertaken. Even greater specificity is contained in S. 1133. The Corporation has, through changes in its regulations, increased its capacity to monitor such advocacy and insure compliance by recipient programs.

We ask that you resist all efforts to make the restriction on Legislative Advocacy contained in P.L. 97-377 a part of this Act. It is essential that legal service programs continue to be able to use the legislative process in behalf of eligible clients, where appropriate. S. 1133 provides an adequate response to those who feel further Congressional action is warranted.

CORPORATION FUNDING PRACTICES

There is an area where an ideological litmus test appears to have been used. That is in decisions regarding the funding of certain programs for the calendar year 1983. The LSC Board granted, albeit with conditions which seem to be contrary to the prohibitions established in P.L. 97-377, full year funding (at the 1982 level) for local programs. However, action was taken against entities which have long been the special targets of political idealogues. These targets were the support centers (at the national and state levels), the Reginald Heber Smith Fellowship Program; the Project Advisory Group; NLADA; and, the National Clients Council.

The Committee may be stymied in any effort to gain clarity about the Corporation's intentions as to the future funding of these programs. In almost every instance, a "study" has been ordered with Board action to come some time in the future. The Committee could, however, make clear its awareness of these studies and require - before funding decisions are made - that the results be made available to the Committee. We think that this would insure that appropriate criteria for the studies are established and adhered to.

FUNDING

At its inception, LSC articulated the modest goal of seeking to provide, "rminimum access." This was defined as two attorneys for each ten thousand eligible persons. The level of appropriations and the impact of inflation never allowed that goal to be realized. The best that could be accomplished was to insure that every eligible client lived in some program's service area. That was never a guarantee that service could be obtained. Hard choices were made during priority-setting sessions and service providers made commendable efforts to serve every-one they could. Special methods were found to enhance the possibility for service.

Then we experienced the impact of a 25% cut back in funding levels. While we clearly fared better than any number of social service programs, the resulting retrenchment was hard on everyone - client, service provider, program management and those, like you, who had guarded against such cuts in the past.

I am restrained by reality from attempts to advocate the full restoration of programs to the funding level which would have been reached had there been no reduction and increases, at least sufficient to offset inflation, been granted. Clients feel that the bill before you is prudent in its figure of \$296 millions for fiscal year 1984 and we are pleased that it preserves future year options by authorizing such sums as may be necessary for fiscal years 1985 and 1986.

Thank you.

The CHAIRMAN. Mr. Raven, I apologize for keeping you this long. We are used to seeing you in the Judiciary Committee, but we are very happy to have you here. I just have to apologize to all of you, but it has been a very horrendous day. We are in the middle of this budget resolution, and it is a big fight on the floor. I was leading the fight until about 2 o'clock today.

STATEMENT OF ROBERT D. RAVEN, ESQ., CHAIRMAN, STANDING COMMITTEE ON LEGAL AID, AMERICAN BAR ASSOCIATION, SAN FRANCISCO, CALIF.

Mr. RAVEN. I understand. I appreciate the opportunity to appear, and I will try to be very brief.

First, the ABA does support reauthorization. It supports S. 1133. No one contends, at least in public any more, that the poor should not have equal legal services. But what we hear is a suggestion of block grants, and I dealt with that in my written testimony. I will not go into that further.

The CHAIRMAN. Are you against block grants, or would you be against the State bar handling these programs?

Mr. RAVEN. I think I would, and I will tell you why in a minute.

The CHAIRMAN. Let me tell you what I am concerned about. I was a supporter of Legal Services, but I have heard so many complaints through the years, I have to admit that now, as chairman of this committee, I think it is my responsibility to get into the oversight and find out what the extent of those complaints is. I believe some of them are justified.

I have often thought that if we could get the State bars to handle these funds and to determine who the grantees are, and let them do it the way they want to do it, I could support more funding. I think we could defuse an awful lot of the politicization that has gone on in this area, but in any event I am interested in what you have to say.

Mr. RAVEN. I think there is another way of doing it, Senator. You know, the State bars are under attack. There is a bill in Sacramento at this time to do away with the State Bar of California. No one is happy in this world we are living in. It is certainly true, as Ella Fitzgerald tells us every day, "No One Is Perfect."

But I think by and large the Senate and the House are being conned if they go for all of these charges. I went through this in 1970 and 1971, when I was president-elect and president of the San Francisco Bar. Mr. Phillips came out there and got Lew Uhler and a good friend of mine who was working with the Governor then to

go for a lot of this stuff. They brought forward 120 charges. A hearing was held. They brought out three very conservative, very fine, retired Republican chief justices—from Maine, Colorado, and Wisconsin. They had 150 witnesses, they had 400 pages of findings, and they found every one of those claims was totally irresponsible and without foundation.

Yet, I heard those same claims in the spring of 1981, when I came back here to talk to people on the Hill.

I have been talking to people on my committee, and I am going to go to the leadership of the ABA and see if I cannot get their OK to come to you and say, "We will help get to the bottom of this."

The CHAIRMAN. You would help with the oversight?

Mr. RAVEN. I am going to recommend that we would set up hearing committees around the country and get into this and get to the bottom of it.

The CHAIRMAN. That is not a bad idea. They have to be nonpartisan committees, and they have to look into it from a purely accuracy standpoint.

Mr. RAVEN. I understand.

The CHAIRMAN. Some of these charges are true. We have been checking into them, and they are true.

Mr. RAVEN. Sure.

The CHAIRMAN. This is a big corporation. There are not many business corporations that run \$241 million a year though that do not have some problems. What we have to do is to determine the extent to which those charges are true and find some way or some set of recommendations of how best to defuse this political issue and get it so that we are providing legal services for the poor. I would really be interested if you could get the bar association to assist us in that regard.

Mr. RAVEN. I am going to try, Senator, and I will report back.

The CHAIRMAN. For us to defuse it, however, we would have to come up——

Mr. RAVEN. It has to be a credible operation.

The CHAIRMAN. It has to be credible. It has to be something that is depoliticized. I would like to get it out of politics. Frankly, I believe that one of the most serious charges against the Legal Services Corporation and its grantees are that they are engaging in political advocacy. I know that is true. Now, maybe it is not as great an extent that I think it is, and maybe it is not to the extent that we should even be concerned, but I think we ought to find out, and if that is so, we ought to change it.

Mr. RAVEN. I would agree, and I think you will find it is not so, other than as I say nobody is perfect and we are going to find some mistakes.

I would like to talk about just one other matter. The fight has shifted a lot from the old fight that the poor were not entitled to this service, to know you should not sue the government—local, State, or Federal.

Now, we all, I think, can agree that most public officials and employees are law-abiding citizens just like the rest of us. But we also know that is not true of all. There is a certain amount of ignorance as we all perform our jobs. I know this because I represent power-

ful corporations who have to go to court themselves against the government, at all levels, to right wrongs.

Frankfurter told us long ago that the Government must turn square corners with the people in this country. And Brandeis said that if the Government becomes a lawbreaker then we have anarchy. And I heard it best stated by a superior court judge, Judge Hogenboom, in Los Angeles in the spring of 1981 when there was a great urging to do away with the Corporation. He was a fine gentleman, appointed by President Reagan when he was Governor, one of the many fine judges he appointed. And he made this statement which I thought cut right to the heart of it. They asked him in a press conference, How can it be that you, a judge, would support the Legal Services Corporation? He said, for this reason. How ironic it is that right at this time, in this Nation, when most people are standing on their feet—and rightly so—applauding the action of Polish Solidarity to bring to heel an abusive government in Poland we would even think of taking away from the poor people in this country their only right to get redress against the Government.

I think that is so true and so important. You know, we scoff in this country—and rightly so—at banana republics and the Soviet Union and the Eastern Bloc countries that have elaborate written constitutions, protecting the rights of individuals against government. We scoff because we know that is a facade, a sham. Yet, if we are not careful in this country, we are going to come to the same thing.

My committee is also interested in legal representation on the criminal side. That is becoming a sham. We are not furnishing legal counsel.

The CHAIRMAN. Let me say this on that point. I do not know many Members of Congress, at least not in the Senate, who make that particular argument. What they are concerned about is the excessive amount of lawsuits brought, sometimes frivolously, against governments and what some think are the excessive use of class actions. I am not sure that is so. That is why what you are suggesting may be the answer to finding out. If we are using sections 1983 and 1984 abusively or excessively, when there are \$6 billion of lawsuits against municipalities in this country right now, we ought to change the law, and Congress ought to have the guts to do it.

On the other hand, what I find to be the major criticism, is that it is costing municipalities severely because of what some think are frivolous lawsuits. There are millions and millions of dollars in attorneys' fees every year, regardless of how frivolous the suits may be. Now that is something we just need to get into and check out.

Mr. RAVEN. That is right. The people in Legal Services point out they win most of those cases, and I am told that by judges, too. This has been my experience too.

The CHAIRMAN. That may be, and even that might not be the answer because some criticize the advocacy of the judiciary in this country. I have to admit, I am one of them; I think they are too judicially active. You and I both worked in the Judiciary Committee to try and get a better judiciary in this country. We both know

that there are some very extreme judicial activists on the Federal bench in this country.

Mr. RAVEN. You will recall we finally won one of those fights, I think the first time in 37 years, the last one I appeared on.

The CHAIRMAN. I was the one who, along with Senator Leahy, led that fight. I appreciated your being willing to stand up. That was a hard thing to do.

Mr. RAVEN. I will look into what we can do, because I am sincerely convinced that although we will find, as you will in any program, a few problems, I think we will find this Corporation has done an excellent job. I would like to help put the evidence together and prove it. If we are wrong, we ought to know it, but I am sure we will not be wrong. But we ought to lay this to rest, and we should not let Congress be blackjacked into putting on a lot of restrictions because of false charges.

I just want to take 1 minute to talk about one of these charges. When I was president of the State bar in April 1981, when ABA and the local and State bars came back here to the Hill, I was very disturbed. I got a letter about the California Rural Legal Assistance and an action they handled. It painted a terrible picture. So I sent it right away to the California Rural Legal Assistance. I said, "I want to know what this is all about?" When I got into it, I was amazed. If I had been a judge and anyone had submitted anything to me like that, so false in its innuendos, I would have put them in jail.

I found out that, first, this commission in 1971 had found the charges totally without foundation. I found that the Supreme Court of California had found that the suit was rightly filed. And then I found the county that was involved had paid a good deal of money to settle it. It was an atrocious matter.

I think most of the charges will fall into that area, and we ought to dig them out. We should not go by innuendo in this country. Too much of what goes on in this country is in the press. So we stand ready to help.

The CHAIRMAN. I agree. Let me just say this, I appreciate the three of you appearing here today. And Mr. Weiss, I am going to submit some written questions to you, and we will keep the record open, Ms. Hollie, to submit questions to you if we can.

Mr. Raven, I am somewhat excited about your advocacy with the bar association to look into this. Now, some would say—and I think you need to be prepared for this accusation—that the bar association has a hidden motive in wanting Legal Services to continue because it does save an awful lot of voluntary legal time for indigent clients. So whatever you do, it would have to be very credible, and I personally believe it would be. But something like that needs to be done. I do not know that this committee, with its unlimited oversight capability but limited staff to use on a whole range of very important oversights, can do it all.

I might add, we are investigating business union corruption and racketeering and all these other things that I find very important in this country. I do not know that we can get into it and do the job that needs to be done. So to the extent that you can carry that with the bar association, you will have a lot of support from me. To be frank with you, I would like to get it resolved because I person-

ally believe the poor ought to have legal assistance. But, I also believe the Corporation ought to be giving help in mundane areas that presently they do not have enough funds or enough capability of doing. They ought to do that before they start getting into the more exotic areas of law. There ought to be some step-by-step approach before they start filing class action suits. They ought to first make sure all the divorces and domestic relations problems and rental problems and some of the other problems are resolved, because a lot of those are going unresolved while some of these attorneys have a tremendous time with advocacy suits.

I am not saying they should not be able to bring the others if they are legitimate suits, but rather, that we ought to have some priorities.

Mr. RAVEN. Can I make one other point, and this is something the Senate and the House can do. Mr. Olson said, "Why don't they bring an action for the individual person and let that be the end of it?" For years, the IRS has had this nonacquiescence policy, and that is so much a part of our fabric it is like the Constitution, so I do not suggest you ought to take that on. But these other agencies, such as the social security agency, have a nonacquiescence policy now. In fact, the second circuit really took them on with this. That is why people have to bring class actions, because the agencies will tick off cases one by one, and they will put out a nonacquiescence. The second circuit found out about that and said, What do you mean? Every other person in this country, including the U.S. Government, comes before us. The Department of Justice cannot tell us that they are not going to abide by our rules until it goes to the Supreme Court.

I think that Congress should look into the agencies in the United States that think they have a special place before the courts of this country and can take a nonacquiescence position. A corporation could not do that. Poor people cannot do it, and I do not think an agency of the U.S. Government ought to be able to do it. They ought to turn "square corners," as Frankfurter said.

[The prepared statement of Mr. Raven follows:]



AMERICAN BAR ASSOCIATION

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STATEMENT OF

ROBERT D. RAVEN

on behalf of the

AMERICAN BAR ASSOCIATION

before the

COMMITTEE ON
LABOR AND HUMAN RESOURCES

of the

UNITED STATES SENATE

on the subject of

LEGAL SERVICES CORPORATION

May 4, 1983

Mr. Chairman and Members of the Committee:

I am Robert D. Raven, a practicing attorney from San Francisco, California, and Chairman of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants. I appear before you today at the request of our President, Morris Harrell, to express our strong support for the Legal Services Corporation and for its reauthorization.

It is, in our view, essential that there be an effective, efficient, independent national program to ensure that our poorest citizens will have meaningful access to the legal processes of this country. The most obvious beneficiaries of this program are the millions of poor persons in this country who would otherwise have no meaningful access to legal services. But in a very real sense, it is our entire citizenry who benefit from this program. As George Washington stated to Edmund Randolph in appointing him as the first Attorney General:

"Impressed with a conviction that the due administration of justice is the firmest pillar of good government, I have considered the first arrangement of the judicial department as essential to the happiness of our country and to the stability of its political system."

The administration of justice depends upon all parties having effective legal representation. To deny such representation to those who are already disadvantaged is to work a disservice to our justice system and to our nation.

Critics of the Corporation contend that the issue is not that of assuring equal access to justice for the nation's poor

but that of the manner in which the services are to be provided. This is an appropriate issue. We have examined the various suggestions of alternative systems and have found them all wanting. We believe the Corporation has done a commendable job and deserves the ongoing support of this nation.

There have been two principal alternatives advanced. The first is that the program be converted into a block-grant program to the states. The present Administration had advanced this idea on a number of occasions, but neither house of Congress has seen fit to endorse this approach. A number of very real considerations lay behind this action.

First, as recommended by the Administration each of the last three years, no funding would have been provided for this activity. Rather, the states would have been permitted to utilize general block grant funds for this purpose if they chose to do so. The block grants, as proposed, would have been put together with funds transferred from existing federal programs in other areas. The clear signal to the states would be that this would be the lowest-of-the-low in terms of priority for state allocation, since it would be the only one of the programs under the block grant which would have been placed in the block grant program with no transferred funds.

Second, even if Legal Services funds were transferred into the block grant program (the defeated 1981 amendment would have

transferred \$100 million), there would be no assurance that the states would use these funds for legal services as opposed to the many other programs which would be competing for these funds. As a practical matter, virtually every other program recommended for block grant funding is one in which the federal government was providing a financial supplement to an existing state program. Thus, there is an office in the executive branch of most state governments with an entrenched interest in ensuring that their programs will receive a fair share of such funds. There is no such office for legal services.

Third, even if there were a proposal to earmark funds specifically for legal services, we would greatly fear that such a move would be the first step toward the phasing out of meaningful legal services in most states. State governments have not demonstrated a strong interest in funding legal services for the poor. The state contribution nationally to civil legal services programs has amounted to less than 1% of total funding. Most states find themselves financially strapped, and it is unrealistic to assume that they will fight to preserve federal funds for a program they have not traditionally supported when other federal assistance programs are imperiled.

One of the major reasons for this has been and is that state governments are frequently sued by clients of legal services programs. The poor are dependent upon a wide variety of state programs for their health and welfare; indeed, the poor are one of

the most regulated and bureaucratized groups in our country. Not infrequently, such programs will fail to apply federal or state laws appropriately and equitably, and legal recourse becomes necessary to assure the client's rights. The states cannot be expected to view with enthusiasm the funding of programs which, by enforcing client rights against the states, would force the states to spend money defending their actions and restoring the client's benefits. And yet, absent such legal representation, most clients would have no legal redress.

Our House of Delegates, in 1969, adopted a resolution on this subject which stated:

"... the legal services program should operate with full assurance of independence of lawyers within its program not only to render services to individual clients but also in cases which might involve action against governmental agencies seeking significant institutional change..."

In the long run, it appears inevitable that turning the program over to the states would result in some level of representation being provided in some states and little or no representation being provided in other states. Our system of justice and our national values make it mandatory that this result not follow.

A second proposal is that the private bar supply all legal services to the poor. We believe such an approach is unworkable and unsound. Assuring that the justice system works for all our citizens is a public responsibility, not the private province of one profession. The lawyers of this country have a proud history

of supplying free services to the poor -- one which we believe is a worthy model for all professions. I will describe shortly some of the efforts which the private bar is making in this regard. But it is inappropriate to expect the legal profession on its own to meet this responsibility.

Part of the consideration is a very practical one. Historically, the private bar has never been able to meet the legal needs of all the nation's poor. Part of the problem is sheer numbers; there are approximately 30 million poor people in this country and only about 1/2 million persons with law degrees. Many of these law school graduates do not practice law. There is an uneven geographical distribution of lawyers. And many practicing lawyers have no expertise in the specialized areas of the law which affect the poor: agency and administrative practice, benefit claims, even landlord-tenant problems.

This situation is not a new one. In 1920, the Association's legal aid committee, which I now chair, was founded. Charles Evans Hughes, later Chief Justice of the United States, became its first chairman. He spoke at the 1920 ABA meeting at which the committee was formed and made this statement:

"The necessity for organization to give this assistance should not be attributed to any general lack of desire on the part of members of the Bar to help the poor, but springs from the conditions which exist in our great cities. We are glad to recognize it as a part of professional duty to assist the helpless and oppressed, and you may find lawyers in every jurisdiction who give a large amount of their time in advising those who cannot pay ... The congestion of population affords opportunity and cover for myriad wrongs against the poor, and the high-minded

practitioner moves in a world to which those most in need are utter strangers; the poor are victimized on every hand and they know not to whom to turn, while those who would prey upon them and make their misfortune a source of illicit gain are always on the watch for opportunity. The members of the Bar who are most likely to recognize professional obligation to the poor are rarely so circumstanced that they can give aid without a waste of effort which suitable organization would render unnecessary; and, while their sporadic efforts would furnish relief here and there, as chance might offer, a multitude would continue to suffer without redress. It is safe to say that the 34,000 applicants whose cases were considered last year by the Legal Aid Society of New York would, for the most part, have gone without the advice to which they were justly entitled had it not been for organized legal aid. Moreover, the wrongs of the poor fall into well-defined classes, and the attorneys for the legal aid societies acquire a wide knowledge and an efficiency in dealing with these cases which enable them to give a service at the offices of the organizations which could not be duplicated by the best law firms in the city. The lawyer in a great city best discharges his obligation to the poor, not by attempting to deal with matters to which his experience is foreign, but by supporting the legal aid association."

Our Association has worked diligently since 1920 to foster the growth of legal aid societies. By 1965, 248 such programs had been established. But in 1965, it had become clear that such voluntary programs could meet only a very small portion of the legal needs of the poor. That year, of course, marked the beginning of the federal commitment in this area.

Let me describe some of the efforts which the private bar is now making to help meet the need. These efforts have been ongoing throughout the period of federal activity, although there has been a considerable redoubling of our efforts in recent years. The

record will show, I believe, a remarkable effort by one profession to meet the needs of the poor. But it will also show that the bar, despite its best efforts, cannot meet the very real needs of the poor.

Despite any past differences which may have existed between the private bar and legal services, the two groups are now working together closely, in partnership, towards involving private attorneys through organized programs, in the delivery of legal services to the poor. This partnership has been developing rapidly during the past two years, as legal services offices have been faced with greater demand for fewer available services. Most private attorneys have long ago discovered that the poor have substantial problems only lawyers are able to handle, and it is only with public support that legal services for the poor could be maintained at a decent level. In Mississippi, for instance, where the history between private attorneys and legal services attorneys may be most accurately described as vitriolic, the fate of the Corporation in 1981 brought the two feuding groups together; many Mississippi attorneys realized that, without each other, legal services would be woefully inadequate.

This partnership has brought to fruition programs involving the private bar in the direct delivery of service in virtually every part of this country. In Mississippi, a statewide pro bono program has been established, providing direct assistance to the poor. Never before had there been an organized pro bono program,

either locally or statewide. In Michigan, the bar added financial support to a long list of ways to increase their contributions to legal services for the poor -- the state bar provided \$50,000 in grant money for developing private bar involvement programs around the state. In Florida, a statewide activation project was created to stimulate and assist local bar and legal services efforts to involve private attorneys. This past February, the ABA, the Florida Bar and the Florida legal services programs conducted a training workshop for directors of private bar involvement programs from throughout the state.

In New Hampshire, a state-wide pro bono program -- considered a "model" program for other state-wide projects -- has a lawyer participation of about 65%, one of the nation's highest. In neighboring Vermont, a state-wide pro bono program was recently implemented by the Young Lawyers Division of the state bar association (in part with a grant from the ABA's Private Bar Involvement Project) as a complement to the existing staff attorney program and a state-wide judicare program in existence since 1978. Another Young Lawyers Division, that of the Utah State Bar Association, is expanding its successful program in Salt Lake City throughout the state.

These are but a few of the over 250 new private bar involvement projects begun in the last two years, in large part with the assistance of required expenditures by legal services programs to involve the private bar in its delivery of services. During this

period dormant pro bono committees have sprung back to life, frustrated private bar involvement plans from the past have been successfully retried, and, in general, the hoped for partnership and the programs that would develop have been realized. The ABA's Private Bar Involvement Project, which has been providing a wide range of assistance to state and local bar association projects, reports that, of those bar associations with over 300 members, all but a handful are involved in some way with a private bar involvement program. Pro bono is also growing among corporate counsel, a fertile area of legal talent. In short, the private bar involvement field has grown radically in the last two years, and has brought in a large segment of lawyers never before involved with an organized program to provide services to the poor.

This marked rise in the volunteer efforts of attorneys around the country is encouraging. Yet, what we are seeing is that these volunteer efforts are only able to meet a very small percentage of the existing need. This positive trend does not prove, despite what this Administration would like, that the private bar could replace the Legal Services Corporation. According to a study by the American Civil Liberties Union, in Eastern Michigan, 21 attorneys agreed to take two cases each, representing only one percent of the cases turned away by the local legal services program; in Middle Tennessee, the pro bono project accepted 260 cases in 1982, while the local legal services program was turning away 100 cases per week. Nationally, the Corporation has estimated that private

attorneys are now picking up almost 10% of the legal services caseload. This is encouraging. But it also underscores the fact that volunteerism is but one component of an overall delivery system for the poor. Despite all good intentions, private attorneys cannot come close to filling the gap caused by a 25 percent cut in the Legal Services Corporation's budget, let alone the total dismantling of the Corporation.

Moreover, the Legal Services Corporation is the backbone of private bar involvement: most programs rely on the local legal services program and national and state support centers for training in poverty law areas; many legal services offices perform intake and screening roles for the pro bono project, among other services.

The bar has also been active in developing and promoting programs to provide funds to legal services programs to supplement federal dollars. The most common of these have been the Interest on Lawyer Trust Account programs, now adopted in eleven states and under consideration in over 30 others. IOLTA, as it is generally known, is a relatively simple concept. It generates interest for law-related public interest activities by pooling client funds in a lawyer's possession that are nominal in amount or held for a short period. These have traditionally been placed in non-interest bearing trust accounts.

IOLTA is a very important and promising means of providing additional monies. It is not, however, as some may believe, a panacea for the funding of legal services.

Estimates for the potential of IOLTA programs vary greatly, ranging from \$30 million to \$150 million a year nationally. Yet, inflation aside, legal services programs have suffered a reduction of more than \$80 million since 1981. In my own state of California, legal services funding has been cut by approximately 8.5 million dollars. However, our IOLTA plan, which requires the participation of all the state's more than 80,000 practicing lawyers, is expected to raise only from six to ten million dollars annually. It is also presently the subject of a lawsuit challenging its validity.

Let me turn now to the nature of any reauthorization legislation. First, as the preceding discussion has indicated, legal services to the poor have been significantly eroded since 1981 despite the increased pro bono activity. We believe that for next year the funding level should be increased at least to a level which would adjust the current \$241 million level by an appropriate inflationary factor for the three years since the 25% funding cut-back was made. The \$296 million figure suggested both in S.1133 and in the House-passed First Concurrent Budget Resolution is, we understand, based on such an assumption.

Second, we believe that the principle of equal access to justice requires that the poor not be treated as second-class citizens in our judicial systems. Our policy-making bodies have spoken frequently to this issue. In 1971, for example, the Board of Governors adopted the first Association resolution calling for the creation of an independent legal services corporation which

"will tend to further the insistence of the American Bar Association on the independence and professional integrity of the Legal Services Program" and which would "be used to fund programs which will provide a broad range of legal services to persons unable to afford the services of an attorney, the charter of which shall contain assurances that the independence of lawyers involved in the Legal Services Program to represent clients in a manner consistent with the professional mandates shall be maintained...." The House of Delegates the following year adopted a resolution which stated that the program should be designed "to insure that legal services remain independent from political pressures in the cause of representing clients" and to "... maintain full and adequate legal services for the poor...." Thus, we have long opposed restrictions which would seek to deny to the poor legal remedies, such as class-action suits, or representation in substantive areas which are available to those who can afford counsel. Decisions about the legal rights of clients should be made by the court system, not by cutting off access to the courts. Similarly, access to the legislative and administrative processes should not be denied.

I would note here that historical charges of abuses by programs are really no longer an issue which Congress should seek to address by statutory restrictions. In the last year, Congress has mandated control of local legal services program boards by the organized bar associations in each area. Further, an office of Inspector General has been established at the Corporation to

investigate and curb abuses. These and other measures have obviated the need for the Procrustean approach of cutting off all representation in particular areas or denying particular legal remedies on a wholesale basis.

We also believe that the national and state support centers and the National Clients Council have greatly assisted the provision of effective and economical legal services to the poor and should be maintained.

We are pleased to see that S.1133 includes in Section 4 a provision designed to ensure an appropriate partnership between the private bar and the legal services programs. Section 4 would require the Corporation to:

"make available, in each fiscal year to the extent feasible and consistent with clause (4), substantial funds to provide the opportunity for legal assistance to be furnished to eligible clients by private attorneys...."

Similar language was included in both H.R.3480, the House reauthorization bill, and S.1533, the Senate reauthorization bill, of the last Congress.

Another provision of S.1133 that we are glad is included is the repeal of Section 1010(c) of the Act. While there may be reason for Congress to be concerned about how scarce federal dollars are allocated, we do not believe that it is appropriate for Congress to impose these decisions on the use of non-federal funds by Corporation grantees. Such restrictions have, we have seen, a particular impact on cooperative bar and legal services pro bono programs that are receiving some Corporation funds as a part of

their funding. Also, in this period of declining federal funding, when legal services programs are reaching out for support to the private sector, this section of the Act inhibits the willingness of the private community to contribute funds.

In conclusion, we urge you to approve legislation to reauthorize the Corporation at a significantly increased funding level and to avoid the imposition of unnecessary restrictions on the program's activities.

The CHAIRMAN. That is an interesting point. I would like to have you write to me more about that. Would you? I might be able to do more on the Judiciary Committee than I can here.

We surely appreciate your time, and I do apologize for this hearing taking so long. Thank you so much, and with that we will recess until further notice. I want to make sure that my closing statement will be put in the record at this point.

[Closing statement of Senator Hatch follows:]

CLOSING STATEMENT OF SENATOR HATCH

The CHAIRMAN. The testimony that we have received today has done little to answer my concerns about the Corporation. We have heard numerous observations from both sides that are really just general in nature. There seems to be a disconcerting absence of hard data as to how much the grantees actually have, how much money they need, and just what they are spending their existing funds on. There seems to be no way the Corporation has for determining how widespread are grantee violations of congressional prohibitions, nor is there effective means for keeping track of attorney staff time. Moreover several allegations have been made about the Corporation that need to be responded to. In sum, we do not have the basic information about what I consider to be basic facts concerning the Corporation's operation.

As a result, I would like to postpone any consideration of reauthorization bills until such time as the committee can hold thorough oversight hearings on the Legal Services Corporation.

This would pose no real threat to the continuation of the program, the grantees are all funded through the end of fiscal year 1983. I think it would be in the best interests of this committee that we not blindly rush forward, but take the necessary steps to insure that our consideration of the appropriate provision of Federal funds for legal services is based upon fact, not assumption.

The CHAIRMAN. The hearing is now adjourned.

[Whereupon, at 6:40 p.m., the committee recessed to reconvene at the call of the Chair.]

APPENDIXES

1. Letter from Senator Hatch to Donald P. Bogard, President, Legal Services Corporation, April 26, 1983
2. Report by the Office of Field Services, Legal Services Corporation, July 23, 1983
3. Additional Statement from Diann R. Jenkins
4. Responses from F. William McCalpin to Questions Submitted by Senator Hatch, May 19, 1983
5. Responses from F. William McCalpin to Questions Submitted by Senator Denton
6. Comptroller General Advisory Opinion in the Matter of the Personnel Practices Within the Legal Services Corporation, April 5, 1983
7. Responses from Nelwynne Hollie to Questions Submitted by Senator Hatch, May 26, 1983
8. Responses from Jonathan Weiss to Questions Submitted by Senator Hatch, May 13, 1983
9. Additional Statement by Robert D. Raven, Chairman, Standing Committee on Legal Services for the Elderly, New York, N.Y., May 19, 1983
10. Statement by Alliance for Legal Rights, Inc., May 4, 1983
11. Letter to Senator Hatch from Jimmy Davis, County District Attorney, Castro County, Texas, May 2, 1983
12. Letter to Senator Hatch from John C. Barrett, Legal Services Corporation of Iowa, May 6, 1983
13. Letter and Accompanying Documents from Wesley J. Fastiff, May 17, 1983
14. Statement by Maxwell A. Miller, Senior Attorney, Mountain States Legal Foundation, May 4, 1983
15. Letter to Senator Hatch from Anh Tu, Staff Coordinator, Project Advisory Group, May 9, 1983
16. Letter and Accompanying Documents from W. E. Weeks, Executive Vice President, Texas Citrus and Vegetable Growers and Shippers, April 27, 1983

ORRIN G. HATCH, UTAH, CHAIRMAN
 ROBERT T. STAFFORD, VT.
 DAN QUAYLE, IND.
 DON WICKLES, ORLA.
 GORDON J. HUMPHREY, N.H.
 JEREMIAH "BERTON" ALJ.
 LOWELL P. WICKER, JR., CONN.
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 JOHN P. EAST, N.C.
 PAULA HAWKINS, FLA.
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 HOWARD M. METZENBAUM, OHIO
 SPARK M. MATSUNAGA, HAWAII
 CHRISTOPHER J. DODD, CONN.

APPENDIX 1

United States Senate

COMMITTEE ON LABOR AND
 HUMAN RESOURCES
 WASHINGTON, D.C. 20510

RONALD F. DOCKSAJ, STAFF DIRECTOR
 KATHRYN O'L. HIGGINS, MINORITY STAFF DIRECTOR

April 26, 1983

Mr. Donald P. Bogard
 President
 Legal Services Corporation
 733 15th Street, N.W.
 Washington, D.C. 20005

Dear Mr. Bogard:

On May 4, 1983, the Committee on Labor and Human Resources is scheduled to hold an authorization hearing on the Legal Services Corporation. We would like for you and Mr. Robert E. McCarthy, Esq., to testify on behalf of the Corporation. The hearing should begin at approximately 10:00 a.m. Please feel free to have any member of your staff accompany you as well.

In order to prepare fully for the hearing, we would appreciate your providing me with the information requested below prior to the hearing. While I realize that this is an extensive request, I feel that it is imperative that we have this information in advance of the hearing so that our review can be objective, thorough and fair.

With regards to the national office, please provide the following:

1. Audits:

A. For FY 80, 81 and 82:

(i) The number of audits of recipients performed by LSC.

(ii) The number of audits of recipients that were not able to be performed because of poor, improper or nonexistent record keeping by recipients.

(iii) The number of audits that were not performed because of non-cooperation by recipients.

(iv) The number of audits provided to LSC by recipients.

(v) The name and address of any recipient who had its funding reduced, terminated or refunding denied as a result of audit findings.

(vi) The name and address of any recipient who had its funding reduced, terminated or refunding denied because of the recipient's failure to cooperate with the audit process.

B. For FY 1980, 1981 and 1982, identify:

(i) Each recipient who was found to be in violation of or was found to have employees acting in violation of the Legal Services Corporation Act or LSC regulations as a result of the audit process.

(ii) The disciplinary measures taken against any recipient or employee of any recipient found to be in violation of the Legal Services Corporation Act or LSC regulations as a result of the audit process.

C. For FY 1980, 1981 and 1982:

(i) The number of violations of the Legal Services Corporation Act or its implementing regulations uncovered as a result of the audit process.

(ii) A breakdown by category of the types of violations found by the audit process (e.g., representation of ineligible clients, lobbying, instigation of impermissible class actions, etc.).

(iii) The number of hours found to have been expended by recipients or employees of recipients representing ineligible clients or engaging in activities not permitted by the Legal Services Corporation Act or its implementing regulations.

(iv) The amount of money found to have been expended by recipients as a result of representation of ineligible clients or engaging in activities not permitted by the Legal Services Corporation Act or its implementing regulations.

2. State Advisory Councils

A. Are there any states which do not have state advisory councils? If so, which ones? If so, why has the LSC not acted to appoint one for that state?

B. For each of the last five years, please provide:

(i) The number of complaints received by the Corporation from the State Advisory Councils.

(ii) The investigative action taken by the Legal Services Corporation in response to these complaints.

(iii) The number of complaints found to be valid.

(iv) The number of recipients who had disciplinary action taken against them as a result of complaints lodged by the State Advisory Councils.

(v) The name and address of each recipient against whom disciplinary action was taken as a result of complaints lodged by the State Advisory Councils and the nature of the discipline.

3. Citizen Complaints

For each of the last five years, please provide:

(i) The number of complaints against recipients received by the Legal Services Corporation from private parties.

(ii) The investigative action taken by the Corporation in response to these complaints.

(iii) The number of complaints determined to be valid.

(iv) The number of recipients who had disciplinary action taken against them as a result of complaints lodged by private parties.

(v) The name and address of any recipients who had disciplinary action taken against them as a result of complaints by private parties and the nature of the discipline.

4. Nature of Complaints

Please provide a breakdown by category of the types of complaints received by the Legal Services Corporation for FY 1980, 1981 and 1982 (e.g., client solicitation, malicious prosecution, lobbying, representation of ineligible clients, etc.).

5. Referrals for Prosecution

How many matters have been referred to the Justice Department or any other agency, over the past five years, for the purpose of seeking prosecution, fines, penalties or reimbursement of the Treasury or the LSC on account of complaints, audits, or investigations which indicated a probable violation of the Legal Services Corporation Act or LSC regulations by recipients or employees of recipients?

6. Grantees and Subgrantees

For each grantee and subgrantee, please provide the following information:

A. Name, address and phone number of the grantee or subgrantee.

B. List of the Board of Directors of the grantee.

C. Dollar amount of federal grant or subgrant from Legal Services Corporation in FY 1980, 1981 and 1982, by year.

D. List of any additional federal funds received in FY 1980, 1981 and 1982, by year and total amount by year.

E. Dollar amount of any direct state appropriation or other funding in FY 1980, 1981 and 1982, by year.

F. List any additional state or local funding in FY 1980, 1981 and 1982, by year and total amount by year.

G. Number of employees by category (i.e. attorneys, paralegals, and clerical) in FY 1980, 1981 and 1982, by year.

H. Total number of work hours by attorneys and by paralegals in FY 1980, FY 1981 and FY 1982, by year, by category.

I. Total number of cases for FY 1980, FY 1981 and FY 1982, by year.

J. Total amount of legal fee awards received in FY 1980, FY 1981 and FY 1982, by year.

K. Please list each fee recovery in excess of \$1,000, annotated by a brief description of the case and total work hours.

L. List name of each class action initiated or pending during FY 1980, FY 1981 and FY 1982, annotated with the number of hours spent on each suit, what percentage that number of hours represents of the total work hours performed by the grantee or subgrantee, and the amount of any legal fees awarded.

M. The carry-over balance for FY 1980-1981, FY 1981-1982, and FY 1982-1983, by year.

N. List total amount of interest, dividend, rental or royalty income for FY 1980, FY 1981, and FY 1982, by year.

O. A list of all real property owned, including property once owned, but conveyed to another owner. For each property, list a) date of acquisition and initial cost, b) cost paid and source of funds for renovation or remodeling, and c) either the sale price or current market value, and an aggregative figure of the value of real property owned by local legal service organizations.

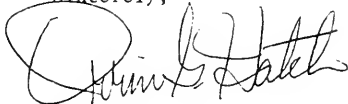
P. A list of all other property owned with an initial purchase price of \$1,000 or more.

Q. A list of the amount paid of FY 80, 81 and 82 on behalf of the program or any of its employees for professional or union dues and an aggregate figure. List separately amounts paid to a) National Legal Aid and Defenders Association, b) Project Action Groups, c) American Bar Association, d) union dues (provide name of union), e) C.O.P.E. or other political action group and an aggregate figure for each of these.

R. List of any lawsuits against the grantee or subgrantee initiated or pending in FY 1980, FY 1981, and 1982, annotated by a brief description of the case and, where appropriate, the nature of its resolution.

Thank you for your cooperation in this matter. Please call Kevin McGuinness on my staff (202) 224-6770 once you have had time to review this letter and can provide an estimation of the time it will take you to comply with this request.

Sincerely,



Orrin G. Hatch
Chairman

OGH:kmh

REPORT
BY THE
OFFICE OF FIELD SERVICES
TO THE
PRESIDENT OF THE
LEGAL SERVICES CORPORATION

JULY 13, 1983

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The Office of Field Services was requested to provide responses to a number of questions posed in Senator Hatch's letter of April 26. A summary of those questions and the OFS responses are set forth below. A copy of all data gathered has been forwarded to the Committee.

QUESTION 1

(B) For FY 1980, 1981 and 1982, identify:

(i) Each recipient who was found to be in violation of or was found to have employees acting in violation of the Legal Services Corporation Act or LSC regulations as a result of the audit process.

(ii) The disciplinary measures taken against any recipient or employee of any recipient found to be in violation of the Legal Services Corporation Act or LSC regulations as a result of the audit process.

(C) For FY 1980, 1981 and 1982:

(i) The number of violations of the Legal Services Corporation Act or its implementing regulations uncovered as a result of the audit process.

(ii) A breakdown by category of the types of violations found by the audit process (e.g., representation of ineligible clients, lobbying, instigation of impermissible class actions, etc.).

(iii) the number of hours found to have been expended by recipients or employees of recipients representing ineligible clients or engaging in activities not permitted by the Legal Services Corporation Act or its implementing regulations.

(iv) The amount of money found to have been expended by recipients as a result of representation of ineligible clients or engaging in activities not permitted by the Legal Services Corporation Act or its implementing regulations.

RESPONSE:

Because of past LSC practices, information needed to answer questions 1(B)i, ii; 1(C)i, ii, was located in the nine LSC Regional Offices throughout the country. LSC Regional Offices were requested to respond to the Senator's questions and to provide OFS with the answers. Upon receipt of the regional office responses they were forwarded to the Committee. The following is a summary of the information contained therein.

Prior to commencing with our summary, several items should be noted. The regional offices were instructed to strictly read the language contained in Senator Hatch's letter. Consequently, such language as "as a result of the audit process" narrowed the scope of the regional office responses to include only those violations discovered by means of the audit process. The audit process, which is conducted by independent auditors, is not likely to discover violations of the nature described in the questions above.

In addition, several regional offices read the phrase, "in violation of the Legal Services Corporation Act or its implementing regulations", to include violations of the LSC Audit Guide standards rather than violations of the broader regulations pursuant to which the Audit Guide is written.

Furthermore, in response to Question 1(C)iii, it should be noted that it has never been the policy of the Legal Services Corporation to require grantees to keep records concerning attorney hours. Although there are some programs that have such a practice, the great majority do not. Therefore, the information is simply not available. As a further consequence of having no information on attorney hours it is impossible to provide an answer to Question 1(C) iv, which requests the amount of money expended on impermissible activities. Because our recipients provide services, the only appropriate measure of the amount of federal funds spent on impermissible activities would depend upon a determination of the amount of compensation for time expended for such activities.

The following regional offices found no violations of the Act or regulations within their regions over the past three years.

- o Boston Regional Office
- o New York Regional Office
- o Seattle Regional Office
- o Chicago Regional Office

The Denver Regional Office reports that four programs were cited for failing to comply with regulations concerning local board composition and quarterly meeting requirements. In addition, four other programs were cited for failing to follow the Audit Guide procedures and for other fiscal irregularities. All but one of the audit problems have been resolved; and measures have been taken to resolve problems relating to local board activities.

The Atlanta Regional Office has reported that six programs were found to have violated the Audit Guide which resulted in those costs being disallowed as a proper charge to LSC.

The San Francisco Regional Office reports that two programs were found to be in noncompliance with the Private Attorney Instruction in 1982. Both of these programs had underspent the required amount of funds. In addition, five programs were found to have violated the Audit Guide. One program was defunded and no disciplinary action was taken with regard to the others.

The Philadelphia Regional Office reports that one program had violated the Audit Guide. The problem was resolved.

The Northern Virginia Regional Office reports that there were two violations in that region during the past three years. One program served an ineligible client. However, the regional office indicates that it was a relatively inconsequential and isolated instance so it took no action. The other violation involved providing assistance to an individual in a criminal matter. The program was reimbursed for expenses.

It should be further noted that violations of the Act and other irregularities should be discovered through such processes as the monitoring and evaluation system. That system requires the on-site inspection of each program by a monitoring and evaluation team every 18 months. Written reports are subsequently submitted by those teams. This office will provide, at the Committee's request, a review and summary of violations or irregularities found in that process.

In addition, because annual audits are typically prepared by local independent accounting firms, audits are often inadequate in the area of regulatory compliance issues. The Office of Field Services recommends that such audits be supplemented by an audit process similar to those conducted by GAO.

<u>REGION</u>	<u>CATEGORY OF VIOLATION</u>	<u>NUMBER</u>	<u>DISCIPLINARY ACTION</u>
NEW YORK	NONE		
SEATTLE	NONE		
BOSTON	NONE		
CHICAGO	NONE		
ATLANTA	AUDIT GUIDE	6	6 DISALLOWED COSTS
DENVER	AUDIT GUIDE	4	1 RESIGNATION OF DIRECTOR/AUDITING CONTROLS
			1 DISALLOWED COST
			1 NO ACTION
			1 CURRENTLY BEING REVIEWED
	BOARD REGULATIONS	2	NONE
SAN FRANCISCO	PRIVATE ATTORNEY INST.	2	NONE
	AUDIT GUIDE	4	1 PROGRAM DEFUNDED
			3 NO ACTION
PHILADELPHIA	AUDIT GUIDE	1	NONE
NORTHERN VIRGINIA	INELIGIBLE CLIENT	1	NONE
	ASSISTANCE IN CRIMINAL MATTER	1	REIMBURSED PROGRAM

QUESTION 2State Advisory Councils

A) Are there any states which do not have State Advisory Councils? If so, which ones?

RESPONSE:

As of February 1, 1983, there were only six (6) active State Advisory Councils (SAC). They are as follows:

1. Connecticut - Council members were appointed on March 17, 1982, by Governor William A. O'Neill. Members' terms of office expired on March 17, 1983.
2. California - Council members were appointed on April 9, 1982, by Governor Edmund G. Brown, Jr. Members' terms of office expired on April 9, 1983.
3. Texas - Council members were appointed on April 13, 1982, by Governor William P. Clements, Jr. Members' terms of office expired on April 13, 1983.
4. North Dakota - Council members were appointed on June 16, 1982, by Governor Allen I. Olsen. Members' terms of office expired on June 16, 1983.
5. Colorado - Council members were appointed by Governor Richard D. Lamm on August 20, 1982.
6. Virginia - The file indicates that the Virginia SAC is currently active as is verified by a letter contained therein from J. Farrell Egge, Esquire, Chairman.

The remaining SACs, at least from our files, appear to be inactive. The breakdown by LSC Regions is as follows:

BOSTON

1. Connecticut - Currently active, and mentioned above.
2. Maine - Governor was requested by LSC to make appointments but according to the file, no appointments were ever made.
3. Massachusetts - No recorded activity since 1978.
4. New Hampshire - No recorded activity since 1976.
5. Rhode Island - No recorded activity since 1978.
6. Vermont - No recorded activity since 1976.

NEW YORK

1. New York - LSC made a request of the Governor but the file contains no record of any appointment ever being made.
2. Puerto Rico - No recorded activity since 1976.

PHILADELPHIA

1. Delaware - No recorded activity since 1976.
2. District of Columbia - No recorded activity since 1977. The file contains a telephone message of a call from Mayor Barry's office on May 12, 1979 regarding its SAC.
3. Maryland - Last recorded activity was in November, 1980. The SAC submitted an annual report.
4. New Jersey - No recorded activity since 1979.
5. Pennsylvania - No recorded activity since 1979.

NORTHERN VIRGINIA

1. Michigan - No recorded activity since 1977.
2. Ohio - No recorded activity since 1981, at which time the SAC submitted an annual report.
3. Virginia - Currently active.
4. West Virginia - No recorded activity since 1976.

CHICAGO

1. Illinois - No recorded activity since 1977, at which time an annual report was submitted.
2. Indiana - No recorded activity since 1979, at which time an annual report was submitted.
3. Iowa - No recorded activity since 1980, at which time the annual report was submitted.
4. Kansas - No recorded activity since 1979, at which time the annual report was submitted.

5. Minnesota - No recorded activity since 1977, at which time the annual report was submitted.
6. Missouri - No recorded activity since 1978.
7. Nebraska - No recorded activity since 1980.
8. North Dakota - Currently active.
9. South Dakota - No recorded activity since 1978 at which time the annual report was submitted.
10. Wisconsin - No recorded activity since 1980.

ATLANTA

1. Alabama - No recorded activity since 1976.
2. Arkansas - Last recorded activity was in 1981
3. Florida - No recorded activity since 1976.
4. Georgia - No recorded activity since 1976.
5. Kentucky - No recorded activity since 1976.
6. Louisiana - No recorded activity since 1979.
7. Mississippi - No recorded activity since 1979.
8. North Carolina - No recorded activity since 1978.
9. South Carolina - No recorded activity since 1976.
10. Tennessee - No recorded activity since 1976.

DENVER

1. Arizona - No recorded activity since 1976.
2. Colorado - Currently active.
3. New Mexico - No recorded activity since 1976.
4. Oklahoma - No recorded activity since 1976.
5. Texas - Currently active.
6. Utah - No recorded activity since 1976.

SAN FRANCISCO

1. California - Currently active.
2. Nevada - The file contains a letter from Governor Mike O'Callaghan, dated May 24, 1978, in which he makes clear his intention not to make reappointments to the SAC.

SEATTLE

1. Alaska - No recorded activity since 1976.
2. Hawaii - No recorded activity since 1977.
3. Idaho - No recorded activity since 1976.
4. Micronesia - No recorded activity since 1976.
5. Montana - No recorded activity since 1979.
6. Oregon - No recorded activity since 1977.
7. Wyoming - No recorded activity since 1976.
8. Washington - No recorded activity since 1976.

QUESTION 2 (cont'd) (A):

- A) If so, why has the LSC not acted to appoint one for that State.

RESPONSE:

Related provisions of the Legal Services Corporation Act, as amended 1977, Public Law 93-355, Public Law 95-922, (hereinafter referred to as the Act), Section 1004(f) provide for the appointment of a nine member advisory council for each state by the Governors of each state. ". . . the Board shall request (emphasis added) the Governor of each state to appoint a nine member advisory council for such state. . . ." While the Act itself doesn't specifically address the question of territories or independent jurisdictions which are not states, but where Corporation programs are located, the regulations clearly do. 45 CFR 1603.2(i). Section 1004(f) provides further that a majority of the members appointed to the council shall be attorneys admitted to practice in the particular state. The attorney members are to be appointed only after consultation with and receipt of recommendations by the Governor from the state Bar Association. 1004(f) charges the State Advisory Councils with the duty to notify the Corporation of any apparent violations of the Act and applicable rules, regulations and guidelines. The Act grants to SACs no additional responsibilities or duties.

While the language of the 1004(f) is clearly mandatory with respect to the duty of the Corporation's Board of Directors to request the Governor of each state (and by implication the highest executive official of each affected jurisdiction) to appoint SACs, it arguably imposed that duty only upon the Corporation's first Board. "Within six months after the first meeting of the Board, the Board shall. . ." Such a reading of this language, however, results in anomalous situation LSC finds itself in at present, i.e., with no clear Congressionally mandated direction with respect to the obligation of succeeding Boards in this matter. The question is should 1004(f) be read in such a way as to make it not only a mandatory but also a continuing obligation that the present Board and all succeeding ones (or the Corporation itself after a proper delegation of authority) be required to take the necessary steps to insure that the Governor of each state is kept aware of his/her responsibility in this area, i.e., by making such a request "within six months of the first meeting of the Board."

Leaving aside for a moment, if that is possible, the political and historical realities which necessarily attend this and any review of SACs, it would seem that, in keeping with the well established principal that, where unclear, statutory language should be read and interpreted in a way that makes common and practical sense, 1004(f) does impose such a mandatory and continuing obligation upon the Corporation with regard to SACs. The language, "Within six months after the first meeting of the Board the Board shall request the Governor of each State to appoint a nine-member advisory council for such state," is itself, of course, not self explanatory. For example, if we read the language as imposing a continuing obligation upon successive Boards, several questions arise:

1. What constitutes a new Board such that the words "first meeting" make any sense? Would the replacement of one member, two members, five members, etc. of the entire Board be required in order to trigger the "first meeting" requirement?
2. Should "first meeting" be read as referring to only the first Board?
3. Does every change in Board composition mean that the next meeting following such a change constitutes a "first meeting"?

A common sense resolution of these seeming problems would be the realization that any or every change in Board composition would not necessarily trigger the need to make a request of each Governor to appoint a SAC. I am referring herein only to situations, such as the one we have now, where in the great majority of states no SAC currently exists and/or functions.

1004(f) also provides that "if ninety (90) days have elapsed without such an advisory council appointed by the Governor, the Board is authorized [emphasis added, the language reads, not required, but authorized] to appoint such a council." The files of the SAC's suggest that this has never been done by the Corporation. Again, with respect to the above discussed provision, it is unreasonable to read this provision as applying to only the first Board of the Corporation and not to succeeding ones. It is important to note here that nowhere in the Act does it say or in the legislative history has it ever been suggested that the existence of the SACs is mandated. The only mandatory language specifically addressed to the Corporation speaks to the Corporation's obligation to make a request of each state Governor. The additional mandatory language contained in 1004(f) applies to either the Governor of each state or to the councils themselves.

1004(f) provides that the membership of the SACs "shall be subject to annual reappointment." Hence one year terms of office are specified for council members. The argument for reading 1004(f) as imposing both a mandatory and continuing obligation upon the Corporation to request the appointment of SAC members is further strengthened by this provision relating to term of office. 1004(f) goes on to make any meeting of the SACs subject to the requirements of the "Sunshine Act."

The legislative history of 1004(f), as compared to that of the other sections of the Act, is sparse and generally not very helpful in resolving the issues raised thus far. Although there are a few clues with respect to some of said issues, the question becomes one of the interpretation of this history. For example, with respect to both the Senate and House bills which resulted in the Act, while the House bill required the Board to appoint a SAC within ninety (90) days if the Governor failed to do so, the Senate version, on the other hand, simply authorized the Board to make such appointments. It is the Senate version which prevailed on this point and thus appears in the Act. Conference Report, H.R. 7824, p. 18. H.R. 3480 would require the Board to make appointments. Clearly then, the expressed intention of Congress was to give to the Corporation the option to appoint SACs in those instances in which the state Governors failed to do so in a timely manner. It can be strongly argued that it is logical to infer from this bit of legislative history that Congress did not intend to mandate the creation of SAC but merely an option to do so. The problem still remains, however, with respect to the mandatory language "the Board shall [emphasis added] request the Governor of each state to appoint..." While the creation of SACs is clearly not mandated, the obligation to request that they be created is, just as clearly, mandated. At the outset, the Corporation did request each state's Governor to appoint a SAC.

QUESTION 2 (B)

For each of the last five years please provide:

- (i) The number of complaints received by the Corporation from the State Advisory Councils.

RESPONSE:

The Corporation has received only one complaint.*

QUESTION 2 (B)

- (ii) The investigative action taken by the Legal Services Corporation in response to these complaints.

RESPONSE:

Records indicate that no action was taken.

QUESTION 2 (B)

- (iii) The number of complaints found to be valid.

RESPONSE:

No complaints were found to be valid.

QUESTION 2 (B)

- (iv) The number of recipients who had disciplinary action taken against them as a result of complaints lodged by the State Advisory Councils.

RESPONSE:

No disciplinary action has been taken.

QUESTION 2 (B)

- (v) The name and address of each recipient against whom disciplinary action was taken as a result of complaints lodged by the State Advisory Councils and the nature of the discipline.

RESPONSE:

Since there were no violations, a response is unnecessary.

*Files indicate that Mississippi State Advisory Council originally submitted a complaint in Spring, 1978. The complaint was resubmitted January 29, 1979, after receiving no response from LSC. The complaint was filed by the City of Tupelo against North Mississippi Rural Legal Services. The file indicates that no action was taken.

QUESTION 5Referrals for Prosecution

How many matters have been referred to the Justice Department or any other agency, over the past five years, for the purposes of seeking prosecution, fines, penalties or reimbursement of the Treasury or the LSC on account of complaints, audits, or investigations which indicated a probable violation of the Legal Services Corporation Act or LSC regulations by recipients or employees of recipients?

RESPONSE:

Northern Virginia, Denver, Atlanta, Boston, New York, Chicago and Seattle Regional Offices report no referrals for prosecution.

San Francisco reports that the Legal Aid Society of Monterey program referred a cause of action against a former director for taking and not returning unsecured salary advances to the Monterey County District Attorney's Office. No action was taken by the district attorney; the program is seeking civil remedies.

The Philadelphia Regional Office reports that in 1977, Neighborhood Legal Services, Washington, D.C., discovered an embezzlement of \$37,992 and reported it to the appropriate authorities. The accountant responsible for the embezzlement pleaded guilty; and the program succeeded in recouping all its losses.

QUESTION 6

A) Name, address and phone number of the grantee or subgrantee.

RESPONSE:

The answer to this question can be found in Attachment A.

QUESTION 6

B) List of the Board of Directors of the grantee.

RESPONSE:

A list of Board of Directors has been provided to the Committee. No further action is required.

QUESTION 6

H. Total number of work hours by attorneys and by paralegals in FY 1980, FY 1981 and FY 1982, by year, by category.

RESPONSE:

As has been stated in our answer to Question 1(C)(iii), it has never been the policy of the Legal Services Corporation to require grantees to keep records concerning attorney hours. Although there are some programs that have such a practice, the great majority do not. Consequently, the information is simply not available.

QUESTION 6

- J) Total amount of legal fee awards received in FY 1980, FY 1981 and FY 1982, by year.

RESPONSE:

The total amount of legal fee awards received in FY 1980, 1981 and 1982 with 297 programs out of 326 reporting was \$11,432,445. The following is a breakdown of that total by regions:

DENVER	\$1,145,817	BOSTON	\$1,374,525
SAN FRANCISCO	\$2,095,730	SEATTLE	\$ 868,221
ATLANTA	\$1,158,274	NORTHERN VA.	\$ 881,975
PHILADELPHIA	\$ 166,983	NEW YORK	\$1,415,087
CHICAGO	\$2,325,833		

TOTAL		\$11,432,445
-------	--	--------------

QUESTION 6

- K) Please list each fee recovery in excess of \$1,000, annotated by a brief description of the case and total work hours.

RESPONSE:

A brief description of each case where a fee recovery in excess of \$1,000 was submitted by a majority of the programs to OFS. A copy of those submissions was forwarded to the Committee. It is not feasible for OFS to summarize all such cases because of time constraints; however, all attorney fees have been totaled. See our response to Question (6)-J above.

QUESTION 6

- L) List name of each class action initiated or pending during FY 1980, FY 1981 and FY 1982, annotated with the number of hours spent on each suit, what percentage that number of hours represents of the total work hours performed by the grantee or subgrantee, and the amount of any legal fees awarded.

RESPONSE:

OFS has summarized the regional office responses. See Attachment (B).

QUESTION 6

O) A list of all real property owned, including property once owned but conveyed to another owner. For each property, list (a) date of acquisition and initial cost; (b) cost paid and source of funds for renovation or remodeling, and (c) either the sale price or current market value, and an aggregate figure of the value of real property owned by local legal service organizations.

P) A list of all other property owned with an initial purchase price of \$1,000 or more.

RESPONSE:

Due to time considerations OFS, was unable to summarize information gathered pertaining to question 6(O) as well as question 6(P). However, a copy of that information has already been forwarded to the Committee. 294 out of 326 programs responded to question 6(O)(c). The total amount expended on real property was \$15,454,196.

269 out of the 326 programs responded to question 6(P). The total of other property (equipment) owned with an initial purchase price of \$1,000 or more is \$17,791,238. The following is a breakdown of responses by region:

<u>REGION</u>	<u>REAL PROPERTY</u>	<u>EQUIPMENT</u>
DENVER	\$1,326,077	\$2,800,234
SAN FRANCISCO	\$4,275,621	\$1,026,992
SEATTLE	\$ 210,500	\$ 505,043
BOSTON	\$ 343,323	\$ 849,709
NEW YORK	\$1,388,287	\$ 857,761
PHILADELPHIA	\$ 961,179	\$1,496,770
NORTHERN VIRGINIA	\$ 789,772	\$1,355,960
CHICAGO	\$ 110,000	\$2,218,045
ATLANTA	\$6,049,437	\$6,680,724
<hr/>		
TOTAL	\$15,454,196	\$17,791,238

QUESTION 6

Q) A list of the amount paid in FY 80, 81 and 82 on behalf of the program or any of its employees for professional or union dues and an aggregate figure. List separately amounts paid to (a) National Legal Aid and Defenders Association; (b) Project Action Groups; (c) American Bar Association; (d) union dues (provide name of union); (e) C.O.P.E. or other political action group and an aggregate figure for each of these.

RESPONSE:

Due to time considerations OFS is unable to provide totals of each separate category. However, the Committee has already been provided with the raw data collected in this area. OFS has assembled the total aggregate amount of dues paid for FY 1980, 1981, and 1982 for the 295 out of 326 programs reporting which is \$2,257,475. The following is a breakdown by region:

DENVER	\$288,856	PHILADELPHIA	\$150,493
SAN FRANCISCO	\$132,676	NORTHERN VA.	\$219,654
SEATTLE	\$116,644	CHICAGO	\$230,661
BOSTON	\$ 84,252	ATLANTA	\$592,358
NEW YORK	\$441,881		

TOTALS

\$2,257,475

QUESTION 6

R) List of any lawsuits against the grantee or subgrantee initiated or pending in FY 1980, FY 1981, and 1982, annotated by a brief description of the case and, where appropriate, the nature of its resolution.

RESPONSE:

A majority of LSC programs provided OFS with a list and description of lawsuits against them which we forwarded to the Committee. At the Committee's request, OFS can provide a summary at a later date.

LSC REGIONAL OFFICE	(1) ATTORNEY FEES	(2) DUES	(3) REAL PROPERTY	(4) EQUIPMENT
DENVER Missing	\$1,145,817 0	\$ 288,856 1	\$1,326,077 0	\$2,800,234 6
SAN FRANCISCO Missing	2,095,730 6	132,676 6	4,275,621 7	1,026,992 6
SEATTLE Missing	868,221 0	116,644 0	210,500 0	505,043 4
BOSTON Missing	1,374,525 0	84,252 0	343,232 0	849,709 0
NEW YORK Missing	1,415,087 0	441,881 2	1,388,287 2	857,761 2
PHILADELPHIA Missing	166,983 3	150,493 2	961,179 1	1,496,770 6
NORTHERN VIRGINIA Missing	881,975 0	219,654 0	789,772 1	1,355,960 7
CHICAGO Missing	2,325,833 1	230,661 1	110,000 2	2,218,045 2
ATLANTA Missing	1,158,274 0	592,358 0	6,049,437 0	6,680,724 6
TOTAL	\$11,432,445	\$2,257,475	\$15,454,196	\$17,791,238
TOTAL MISSING(5)	10	12	13	39

PROGRAMS NOT RESPONDING BY REGION; TOTAL:	DENVER	SAN FRAN.	SEAT.	BOSTON	N.Y.	PHILA.	N. VA.	CHIC.	ATLANTA
	0	6	0	3	1	4	2	1	2
307 LSC Programs Responded out of 326									

Footnotes

(1) QUESTION 6(J) Total amount of legal fee awards received in fiscal years 1980, 1981 and 1982.

(2) QUESTION - 6(Q) A list of the amount paid in fiscal years 1980, 1981 and 1982 on behalf of the program or any of its employees for professional or union dues...

- (3) QUESTION -6(O)(C) An aggregate figure of the value of all real property owned by the program.
- (4) QUESTION -6(P) A list of all other property owned with an initial purchase price of \$1,000 or more...
- (5) Did not provide us with the requested information in that category.

APPENDIX

1

LSC PROGRAMS NOT RESPONDING TO OFS INQUIRIES PURSUANT TO SENATOR HATCH'S REQUEST

<u>REGION</u>	<u>GRANT NO</u>	<u>PROGRAM NAME</u>	<u>ATTY FEES/ DUES/PROPERTY</u>	<u>BOARD COMPOSITION</u>
<u>BOSTON</u>				
	233070	Nassau/Suffolk County Law Services	X	
	233080	Legal Aid Society of Rockland County	X	
	233100	Community Action for Legal Services	X	X
	233183	Legal Aid Society Volunteer Division	X	
<u>NEW YORK</u>				
	233207	Southern Tier Legal Services	X	
<u>PHILADELPHIA</u>				
	309011	Urban Law Institute of the Antioch School of Law		X
	309107	NRTA/AARP Legal Counsel for the Elderly		X
	331020	Camden Region Legal Services	X	
	331030	Union County Legal Services		

11.

<u>REGION</u>	<u>GRANT NO</u>	<u>PROGRAM NAME</u>	<u>ATTY FEES/ DUES/PROPERTY</u>	<u>BOARD COMPOSITION</u>
	331070	Middlesex County Legal Services	X	X
	331100	Ocean-Monmouth Legal Services	X	
	331126	Legal Aid Society of Morris County	X	X
	339040	Central Pennsylvania Legal Services		X
	339050	Community Legal Services		X
	339060	Neighborhood Legal Services		X
	339080	Southwestern Pennsylvania Legal Aid Society		X
	339151	Schoykill County Legal Services		X
<u>NORTHERN VIRGINIA</u>				
	423039	Michigan Migrant Legal Assistance Program		X
	423050	Wayne County Neighborhood Legal Services	X	
	436080	Legal Aid Society of Dayton		X
	447056	Tidewater Legal Aid Society		X
	447061	Virginia Legal Aid Society	X	X

III.

BOARD
COMPOSITION

ATTY FEES/
DUES/PROPERTY

PROGRAM NAME

GRANT NO

REGION

CHICAGO

514010	Cooke County Legal Assistance Foundation		X
514017	National Clearinghouse for Legal Services		X
515010	Legal Services of Maumee Valley		X
516006	Legal Services Corp. of Iowa	X	X
516010	Legal Aid Society of Polk County		X
526017	Legal Services of Northeast Missouri		X
526051	Legal Aid Assoc. of Southwest Missouri		X

ATLANTA

601007	Legal Services Corp. of Alabama		X
601037	Birmingham Area Legal Services		X
604041	East Arkansas Legal Services		X
604051	Legal Services of Arkansas	X	X
610040	Legal Services of Greater Miami		X
610081	Gulfcoast Legal Services		X
618004	Northern Kentucky Legal Services		X
618010	Legal Aid Society of Louisville		X
618016	Central Kentucky Legal Services		X

iv.

<u>REGION</u>	<u>GRANT NO</u>	<u>PROGRAM NAME</u>	<u>ATTY FEES/ DUES/PROPERTY</u>	<u>BOARD COMPOSITION</u>
	618036	Cumberland Trace Legal Services		X
	619051	Acadiana Legal Services		X
	619071	Central Louisiana Legal Services		X
	625040	North Mississippi Rural Legal Services		X
	625061	East Mississippi Legal Services	X	
	625081	Southwest Mississippi Legal Services		X
	634000	Legal Services of North Carolina		X
	634010	Legal Services of Southern Piedmont		X
	634020	North Central Legal Assistance Program		X
	634030	Legal Aid Society of Northwest North Carolina		X
	641020	Palmetto Legal Services		X
	641027	Carolina Regional Legal Services Corp.		X
	641057	Legal Services of the Fourth Judicial Circuit		X
	643010	Southeast Tennessee Legal Services		X
	643020	University of Tennessee Legal Aid Clinic		X
	643030	Memphis Area Legal Services		X
	643040	Legal Services of Nashville and Middle Tennessee		X

v.

<u>REGION</u>	<u>GRANT NO</u>	<u>PROGRAM NAME</u>	<u>ATTY FEES/ DUES/PROPERTY</u>	<u>BOARD COMPOSITION</u>
<u>DENVER</u>				
	703010	Pinal and Gila County Legal Aid Society		X
	703048	Papago Legal Services		X
	706012	Native Rights Funds Indian Law Center		X
	742018	Dakota Plains Legal Services		X
	744010	Legal Aid Society of Central Texas		X
	744050	West Texas Legal Services		X
	745000	Utah Legal Services		X
	751038	Wind-River Legal Services		X
<u>SAN FRANCISCO</u>				
	805042	National Housing and Law Project		X
	805082	National Center for Immigrants Rights	X	

vi.

<u>REGION</u>	<u>GRANT NO</u>	<u>PROGRAM NAME</u>	<u>ATTY FEES/ DUES/PROPERTY</u>	<u>BOARD COMPOSITION</u>
	803102	National Senior Citizens Center	X	
	803167	Charles Houston Bar Association	X	
	803170	Channel County Legal Services	X	
	803270	San Francisco Neighborhood Legal Assistance		X
	803290	Legal Aid Society of Santa Clara	X	X
	803320	Legal Aid Society of Monterey County		X
	803340	Tulare County Legal Services	X	X
	803427	Bar Association of San Francisco Volunteer Legal Services Program		X
	803432	National Center for Youth Law		X
<u>SEATTLE</u>	951010	Legal Aid Services		X
TOTAL			19	62
(Received after June 3, 1983)			(46)	

ORRIN G. HATCH, UTAH, CHAIRMAN
 ROBERT T. STAFFORD, VT.
 DAN QUAYLE, IND.
 DON NICKLES, OKLA.
 GORDON J. HUMPHREY, N.H.
 JEREMIAH DENTON, ALA.
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 HOWARD M. METZENBAUM, OHIO
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RONALD F. DOCKESAI, STAFF DIRECTOR
 KATHRYN G. L. HIGGINS, MINORITY STAFF DIRECTOR

-B-

United States Senate

COMMITTEE ON LABOR AND
 HUMAN RESOURCES

WASHINGTON, D.C. 20510

April 26, 1983

Mr. Donald P. Bogard
 President
 Legal Services Corporation
 733 15th Street, N.W.
 Washington, D.C. 20005

Dear Mr. Bogard:

On May 4, 1983, the Committee on Labor and Human Resources is scheduled to hold an authorization hearing on the Legal Services Corporation. We would like for you and Mr. Robert E. McCarthy, Esq., to testify on behalf of the Corporation. The hearing should begin at approximately 10:00 a.m. Please feel free to have any member of your staff accompany you as well.

In order to prepare fully for the hearing, we would appreciate your providing me with the information requested below prior to the hearing. While I realize that this is an extensive request, I feel that it is imperative that we have this information in advance of the hearing so that our review can be objective, thorough and fair.

With regards to the national office, please provide the following:

1. Audits:

A. For FY 80, 81 and 82:

(i) The number of audits of recipients performed by LSC.

(ii) The number of audits of recipients that were not able to be performed because of poor, improper or nonexistent record keeping by recipients.

(iii) The number of audits that were not performed because of non-cooperation by recipients.

(iv) The number of audits provided to LSC by recipients.

(v) The name and address of any recipient who had its funding reduced, terminated or refunding denied as a result of audit findings.

(vi) The name and address of any recipient who had its funding reduced, terminated or refunding denied because of the recipient's failure to cooperate with the audit process.

B. For FY 1980, 1981 and 1982, identify:

(i) Each recipient who was found to be in violation of or was found to have employees acting in violation of the Legal Services Corporation Act or LSC regulations as a result of the audit process.

(ii) The disciplinary measures taken against any recipient or employee of any recipient found to be in violation of the Legal Services Corporation Act or LSC regulations as a result of the audit process.

C. For FY 1980, 1981 and 1982:

(i) The number of violations of the Legal Services Corporation Act or its implementing regulations uncovered as a result of the audit process.

(ii) A breakdown by category of the types of violations found by the audit process (e.g., representation of ineligible clients, lobbying, instigation of impermissible class actions, etc.).

(iii) The number of hours found to have been expended by recipients or employees of recipients representing ineligible clients or engaging in activities not permitted by the Legal Services Corporation Act or its implementing regulations.

(iv) The amount of money found to have been expended by recipients as a result of representation of ineligible clients or engaging in activities not permitted by the Legal Services Corporation Act or its implementing regulations.

2. State Advisory Councils

A. Are there any states which do not have state advisory councils? If so, which ones? If so, why has the LSC not acted to appoint one for that state?

B. For each of the last five years, please provide:

- (i) The number of complaints received by the Corporation from the State Advisory Councils.
- (ii) The investigative action taken by the Legal Services Corporation in response to these complaints.
- (iii) The number of complaints found to be valid.
- (iv) The number of recipients who had disciplinary action taken against them as a result of complaints lodged by the State Advisory Councils.
- (v) The name and address of each recipient against whom disciplinary action was taken as a result of complaints lodged by the State Advisory Councils and the nature of the discipline.

3. Citizen Complaints

For each of the last five years, please provide:

- (i) The number of complaints against recipients received by the Legal Services Corporation from private parties.
- (ii) The investigative action taken by the Corporation in response to these complaints.
- (iii) The number of complaints determined to be valid.
- (iv) The number of recipients who had disciplinary action taken against them as a result of complaints lodged by private parties.
- (v) The name and address of any recipients who had disciplinary action taken against them as a result of complaints by private parties and the nature of the discipline.

4. Nature of Complaints

Please provide a breakdown by category of the types of complaints received by the Legal Services Corporation for FY 1980, 1981 and 1982 (e.g., client solicitation, malicious prosecution, lobbying, representation of ineligible clients, etc.).

5. Referrals for Prosecution

How many matters have been referred to the Justice Department or any other agency, over the past five years, for the purpose of seeking prosecution, fines, penalties or reimbursement of the Treasury or the LSC on account of complaints, audits, or investigations which indicated a probable violation of the Legal Services Corporation Act or LSC regulations by recipients or employees of recipients?

6. Grantees and Subgrantees

For each grantee and subgrantee, please provide the following information:

A. Name, address and phone number of the grantee or subgrantee.

B. List of the Board of Directors of the grantee.

C. Dollar amount of federal grant or subgrant from Legal Services Corporation in FY 1980, 1981 and 1982, by year.

D. List of any additional federal funds received in FY 1980, 1981 and 1982, by year and total amount by year.

E. Dollar amount of any direct state appropriation or other funding in FY 1980, 1981 and 1982, by year.

F. List any additional state or local funding in FY 1980, 1981 and 1982, by year and total amount by year.

G. Number of employees by category (i.e. attorneys, paralegals, and clerical) in FY 1980, 1981 and 1982, by year.

H. Total number of work hours by attorneys and by paralegals in FY 1980, FY 1981 and FY 1982, by year, by category.

I. Total number of cases for FY 1980, FY 1981 and FY 1982, by year.

J. Total amount of legal fee awards received in FY 1980, FY 1981 and FY 1982, by year.

K. Please list each fee recovery in excess of \$1,000, annotated by a brief description of the case and total work hours.

L. List name of each class action initiated or pending during FY 1980, FY 1981 and FY 1982, annotated with the number of hours spent on each suit, what percentage that number of hours represents of the total work hours performed by the grantee or subgrantee, and the amount of any legal fees awarded.

M. The carry-over balance for FY 1980-1981, FY 1981-1982, and FY 1982-1983, by year.

N. List total amount of interest, dividend, rental or royalty income for FY 1980, FY 1981, and FY 1982, by year.

O. A list of all real property owned, including property once owned, but conveyed to another owner. For each property, list a) date of acquisition and initial cost, b) cost paid and source of funds for renovation or remodeling, and c) either the sale price or current market value, and an aggregate figure of the value of real property owned by local legal service organizations.

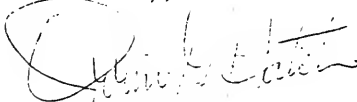
P. A list of all other property owned with an initial purchase price of \$1,000 or more.

Q. A list of the amount paid of FY 80, 81 and 82 on behalf of the program or any of its employees for professional or union dues and an aggregate figure. List separately amounts paid to a) National Legal Aid and Defenders Association, b) Project Action Groups, c) American Bar Association, d) union dues (provide name of union), e) C.O.P.E. or other political action group and an aggregate figure for each of these.

R. List of any lawsuits against the grantee or subgrantee initiated or pending in FY 1980, FY 1981, and 1982, annotated by a brief description of the case and, where appropriate, the nature of its resolution.

Thank you for your cooperation in this matter. Please call Kevin McGuinness on my staff (202) 224-6770 once you have had time to review this letter and can provide an estimation of the time it will take you to comply with this request.

Sincerely,



Orrin G. Hatch
Chairman

OGH: kmh



LEGAL SERVICES CORPORATION
 733 Fifteenth Street, N.W., Washington, D.C. 20005

Donald P. Bogard
 President

Writer's Direct Telephone
 (202) 272-4080

May 4, 1983

Dear Project Director:

It is with great reluctance that I author this letter to each of you. I am fully aware that during the past several months the Legal Services Corporation or the Regional Offices of the Corporation have had to make substantial and numerous inquiries of your programs. I realize that each of these inquiries cost your program substantial staff time and inconvenience. Most of the inquiries which we have posed to you are as a result of Congressional inquiries of the Corporation.

I am also fully aware that many programs and project directors are concerned about the nature of the questions and may feel dubious about the purposes for which the information is being collected. Please let me reassure you and your staff that the information is being collected so that we may evaluate the status of all LSC funded programs, the status of the delivery of legal services to poor people, and so that we may adequately respond to those organizations and persons which have oversight on our activities. I appreciate your cooperation and concern.

In a letter dated April 26 of this year, Senator Orrin G. Hatch, Chairman of the Committee on Labor and Human Resources, requested answers to a number of questions, some of which require your cooperation to appropriately answer. Senator Hatch chairs the Senate Committee which has responsibility for LSC authorization and oversight. The committee's first hearing on reauthorization is May 4 and will be followed by others which are not yet scheduled. I cannot stress enough the importance that your answers to these questions be detailed, accurate, and complete. If you are unable to answer any questions, please give the reasons for your response. Your answers must be received by LSC no later than May 30.

Please respond directly to Washington headquarters to the attention of Tim Baker, Staff Assistant.

In addition to the areas of inquiry which I provide for your response in this letter, the regional offices will be making additional inquiries to follow up on expanded inquiries in areas previously explored.

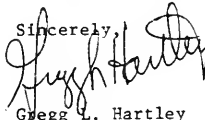
To fulfill the Congressional inquiries, it is necessary that our grantees provide responses to the following areas of inquiry:

1. (a) Total amount of legal fee awards received in fiscal years 1980, 1981 and 1982, by year;
- (b) Please list each fee recovery in excess of \$1,000 annotated by a description of the case and total work hours;

2. A list of all real property owned, including property once owned but conveyed to another owner. For each property, list:
 - (a) date of acquisition and initial cost;
 - (b) cost paid and source of funds for renovation or remodeling, and;
 - (c) either the sale price or current market value and,
 - (d) an aggregate figure of the value of all real property owned by the program.
3. A list of all other property owned and initial purchase price of \$1,000 or more (e.g., typewriters, computers, word processors, furniture, etc.).
4. A list of the amount paid in fiscal year 1980, 1981 and 1982 on behalf of the program or any of its employees for professional or union dues in an aggregate figure for each year. List separately amounts paid to:
 - (a) The National Legal Aid and Defenders Association;
 - (b) Project Directors group;
 - (c) American Bar Association;
 - (d) Union dues (provide name of each union),
 - (e) COPE or other political action groups.
5. Please provide a list of any lawsuits against your program which were initiated or pending in fiscal years 1980, 1981 and 1982, annotated by a brief description of the case, and where closed, the nature of its resolution.

We will appreciate your timely response to these inquiries. We realize how burdensome this request is, but simply remind each program that in receipt of grant funds from the Corporation each program assures that it will, upon request, cooperate with all data collection and evaluation activities undertaken by the Corporation. Please respond to the areas of inquiry in the order presented and as appropriate, in as concise a manner as possible.

Sincerely,



Gregg L. Hartley
Director
Office of Field Services

cc: Tim Baker
Regional Directors

GH/eje



LEGAL SERVICES CORPORATION
733 Fifteenth Street, N.W., Washington, D.C. 20005

Donald P. Bogard
President

Writer's Direct Telephone
(202)

MEMORANDUM No. 83-29

DATE: May 4, 1983
TO: Regional Directors
FROM: Gregg Hartley, Director, OFS *GH*
SUBJECT: Collection of Information

Before you throw up your hands in pure despair, let me tell you that I appreciate your response to memorandum No. 83-21 dated March 21 of this year from Dennis Daugherty pertaining to Congressional information requests. However, there is bad news and good news. The bad news is that we have had additional Congressional information requests which we must respond to in short order. The good news is that some of the information which you have already collected or that the programs have collected can be used in part to satisfy the new requests.

In an April 26 letter, Senator Orrin G. Hatch, Chairman of the Committee on Labor and Human Resources requested answers to a number of questions, many of which will require your cooperation and the cooperation of our recipients to answer. Senator Hatch chairs the Senate committee which has responsibility for LSC reauthorization and oversight. The committee's first hearing on reauthorization is May 4 which will be followed by others which are not yet scheduled. In this memorandum I have listed several questions to which the regional offices should prepare the information for the response. I cannot stress enough the importance that the answers to these questions must be detailed, accurate and complete. If your office is unable to answer any question, please give the reasons for that response. In addition, you will receive a copy of a letter from myself to project directors requesting their assistance in responding to a number of questions. All of the answers must be received by OFS no later than May 30.

If the information requested is in an area to which your office has already coordinated responses from our programs, please simply fill in the gaps and indicate which information has already been sent to OFS headquarters.

Please prepare your responses in a concise document responding in the order of the questions as presented. The areas of concern are as follows:

1. For fiscal years 1980, 1981 and 1982, identify:

(a) each recipient who was found to be in violation of or was found to have employees acting in violation of the Legal Services Corporation Act or LSC Regulations as a result of the audit process.

(b) the disciplinary measures taken against any recipient or employee of any recipient found to be in violation of the Legal Services Corporation Act or LSC Regulations as a result of the audit process.

2. For fiscal years 1980, 1981 and 1982:

(a) the number of violations of the Legal Services Corporation Act or its implementing regulations uncovered as a result of the audit process.

(b) a breakdown by category of the types of violations found by the audit process (e.g., representation of ineligible clients, lobbying, instigation of impermissible class actions, etc.).

(c) the number of hours found to have been expended by the recipients or employees of recipients representing ineligible clients or engaging in activities not permitted by the Legal Services Corporation Act or its implementing regulations.

(d) the amount of money found to have been expended by recipients as a result of representation of ineligible clients or engaging in activities not permitted by the Legal Services Corporation Act or its implementing regulations.

3. The following question is being reviewed by the General Counsel but if regional offices have information which would be of assistance to headquarters in responding to Senator Hatch, it would be appreciated if you would take the time to carefully respond.

How many matters have been referred to the Justice Department or

any other agency, over the past five years, for the purpose of seeking prosecution, fines, penalties or reimbursement of the treasury or LSC on account on complaints, audits, or investigations which indicated a probable violation of the Legal Services Corporation Act or LSC regulations by recipients or employees of recipients?

4. List the name of each class action initiated or pending during fiscal years 1980, fiscal year 1981, and fiscal year 1982, annotated with the following information: whether or not the case has been closed, the number of hours spent on each suit, what percentage that number of hours represents of the total work hours performed by the grantee or subgrantee, and the amount of any legal fees awarded.

Once again, I can only ask for your cooperation and timely response so that we may fully respond to the requests of the Congress.

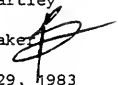
cc: Jim Streeter
Tim Baker
Joshua Brooks
Dennis Daugherty

GH/eje

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MEMORANDUM

TO: Gregg Hartley

FROM: Tim Baker 

DATE: June 29, 1983

RE: Update On OFS Activity Pertaining To The Senate Hearings

In preparing the OFS response to Senator Hatch's request it became apparent that several copies of a list of our grantees and "subgrantees" would be needed for the following reasons:

1. In order to tabulate program responses to the inquiries concerning attorney fees, fees and dues, and capital expenditures a list of LSC grantees would be necessary.
2. LSC never provided a response to Question 6(A) of Senator Hatch's letter which requested the name, address and phone number of each LSC grantee and subgrantee. An immediate response is necessary.
3. In responding to several questions from Senator Hatch's staff, it has become apparent that the list of our grantees and "subgrantees" is not accurate and it is inconsistent. As we previously discussed, our regional offices will need to update the list ^{which we will provide} to include address and name changes, and to list each program's "subgrantees".

Yesterday, I made the request to Gail Francis. Today, I was informed that I would have a worksheet containing a list of our grantees by Thursday morning so that work on Number 1 could begin. Lists for Numbers 2 and 3 will be ready by Friday July 1.



LEGAL SERVICES CORPORATION
733 Fifteenth Street, N.W., Washington, D.C. 20005

Donald P. Bogard
President

Writer's Direct Telephone
(202)

MEMORANDUM

May 29, 1983

TO: Donald Bogard, Dennis Daugherty, and James Streeter
FROM: Gregg Hartley: *GH*
RE: OFS Response to Senator Hatch's Letter

In preparation for the July 12 and 15 Senate Labor Committee Hearings, the Office of Field Services will provide the following response to Senator Hatch's April 26 letter in report form.

QUESTION

(B) For FY 1980, 1981 and 1982, identify:

(i) Each recipient who was found to be in violation of or was found to have employees acting in violation of the Legal Services Corporation Act or LSC regulations as a result of the audit process.

(ii) The disciplinary measures taken against any recipient or employee of any recipient found to be in violation of the Legal Services Corporation Act or LSC regulations as a result of the audit process.

Response

OFS will summarize the responses it received from the Regional Office

QUESTION

(C) For FY 1980, 1981 and 1982:

(i) The number of violations of the Legal Services Corporation Act or its implementing regulations uncovered as a result of the audit process.

RESPONSE

OFS will summarize the responses it received from the Regional Offices

QUESTION

(ii) A breakdown by category of the types of violations found by the audit process (e.g., representation of ineligible clients, lobbying, instigation of impermissible class actions, etc.).

RESPONSE

OFS will summarize the responses it received from the Regional Offices

QUESTION

(iii) The number of hours found to have been expended by recipients or employees of recipients representing ineligible clients or engaging in activities not permitted by the Legal Services Corporation Act or its implementing regulations.

RESPONSE

The response from OFS is the following: It has never been the policy of the Legal Services Corporation to require grantees to keep records concerning attorney hours. Although there are some programs that have such a practice, the great majority do not. Consequently, the information is simply not available.

QUESTION

(iv) The amount of money found to have been expended by recipients as a result of representation of ineligible clients or engaging in activities not permitted by the Legal Services Corporation Act or its implementing regulations.

RESPONSE

OFS will summarize the responses it received from the Regional Offices

QUESTIONSTATE ADVISORY COUNCILS

A. Are there any states which do not have state advisory councils? If so, which ones? If so, why has the LSC not acted to appoint one for that state?

B. For each of the last five years, please provide:

(i) The number of complaints received by the Corporation from the State Advisory Councils.

(ii) The investigative action taken by the Legal Services Corporation in response to these complaints.

(iii) The number of complaints found to be valid.

(iv) The number of recipients who had disciplinary action taken against them as a result of complaints lodged by the State Advisory Councils.

(v) The name and address of each recipient against whom disciplinary action was taken as a result of complaints lodged by the State Advisory Councils and the nature of the discipline.

RESPONSE

OFS has already supplied answers in summary form. Copies of those answers are attached for your review.

QUESTION

REFERRALS FOR PROSECUTION

How many matters have been referred to the Justice Department or any other agency, over the past five years for the purpose of seeking prosecution, fines, penalties or reimbursement of the Treasury or the LSC on account of complaints, audits, or investigations which indicated a probable violation of the Legal Services Corporation Act or LSC regulations by recipients or employees of recipients?

RESPONSE

OFS will summarize the responses it received from the Regional Offices

QUESTION

A. Name, address and phone number of the grantee or subgrantee.

RESPONSE

OFS, its Regional Offices and OIM will provide an updated version of its grantees and subgrantees for 1983.

QUESTION

B. List of the Board of Directors of the grantee.

RESPONSE

OFS has provided Senator Hatch with this information. No further action is required.

QUESTION

H. Total number of work hours by attorneys and by paralegals in FY 1980, FY 1981 and FY 1982, by year, by category.

RESPONSE

It has never been the policy of the Legal Services Corporation to require grantees to keep records concerning attorney hours. Although there are some programs that have such a practice, the great majority do not. Consequently, the information is simply not available.

QUESTION

J. Total amount of legal fee awards received in FY 1980, FY 1981 and FY 1982, by year.

RESPONSE

OFS will total the attorney fee responses to the Hatch letter.

QUESTION

K. Please list each fee recovery in excess of \$1,000, annotated by a brief description of the case and total work hours.

RESPONSE

OFS will not provide a summary of those cases in which attorney fees in excess of \$1,000 were recovered.

QUESTION

L. List name of each class action initiated or pending during FY 1980, FY 1981 and FY 1982, annotated with the number of hours spent on each suit, what percentage that number of hours represents of the total work hours performed by the grantee or subgrantee, and the amount of any legal fees awarded.

RESPONSE

OFS will list the names, dates, status, staff time to-date and/or to completion, cause numbers and programs initiating class action lawsuits over the past 3 years where possible.

QUESTION

O. A list of all real property owned, including property once owned, but conveyed to another owner. For each property, list (a) date of acquisition and initial cost; (b) cost paid and source of funds for

renovation or remodeling, and (c) either the sale price or current market value, and an aggregative figure of the value of real property owned by local legal service organizations.

P. A list of all other property owned with an initial purchase price of \$1,000 or more.

RESPONSE

OFS will total the amount by region of the real property and personal property acquired over the past three years with a purchase price of over \$1,000.

QUESTION

Q. A list of the amount paid of FY 80, 81 and 82 on behalf of the program or any of its employees for professional or union dues and an aggregate figure. List separately amounts paid to (a) National Legal Aid and Defenders Association; (b) Project Action Groups; (c) American Bar Association; (d) union dues (provide name of union); (e) C.O.P.E. or other political action group and an aggregate figure for each of these.

RESPONSE

OFS will total by region the aggregate amount of fees and dues paid by LSC grantees.

QUESTION

R. List of any lawsuits against the grantee or subgrantee initiated or pending in FY 1980, FY 1981 and 1982, annotated by a brief description of the case and, where appropriate, the nature of its resolution.

RESPONSE

OFS will not summarize the lawsuits filed against LSC grantees



S · C · R · C ·

THE WINNERS(?)

THE LOSERS ARE THE TAXPAYERS

THE VICTIMS ARE THE POOR

A REPORT ON LEGAL SERVICES CORPORATION
AND
THEIR ABUSES OF THE PEOPLE OF THE
COMMONWEALTH OF PENNSYLVANIA

Prepared and Compiled by:

Diann R. Jenkins
Co-Chairperson

Swissvale Committee for
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1622 S. Braddock Avenue
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S · C · Q · E ·

March, 1982

"AMONG OPPONENTS OF THE COURT-ORDERED MERGER THAT CREATED THE WOODLAND HILLS SCHOOL DISTRICT, NEIGHBORHOOD LEGAL SERVICES IS MENTIONED IN TONES USUALLY RESERVED FOR THE FORCES OF EVIL. ----- BUT NLSA OFFICIALS INSIST THEY'RE NOT IN THE BUSINESS OF BRINGING ABOUT SOCIAL REFORM - THE AGENCY SIMPLY REPRESENTS THE POOR IN ANY CASE ----"

And so reads the opening lines in an article dated 2-4-82 in the Pittsburgh Press.

According to Howard Thorkelson, Exec. Dir. of PA Legal Services Center, there is a difference between the kinds of cases taken on by Legal Service attorneys and those taken on by public interest legal groups. It's acceptable for public interest groups to herald a cause, however, -- "that's not true in Legal Service." THAT STATEMENT IS COMPLETELY UNTRUE -

ON NOVEMBER 2, 1981, A PRESS RELEASE FROM THE OFFICE OF PA. GOVERNOR RICHARD THORNBURGH "EXPRESSED HIS GRATITUDE AT THE SAFE RELEASE OF THE REMAINING HOSTAGES AT CRATERFORD PRISON". HE WENT ON TO SAY - "THE RINGLEADER IN THE ATTEMPTED ESCAPE AND HOSTAGE-TAKING IS A THREE-TIME CONVICTED MURDERER. HE MURDERED A POLICE OFFICER AND WHILE IN PRISON, MURDERED A WARDEN AND DEPUTY WARDEN. NEVERTHELESS, COMMUNITY LEGAL SERVICES OF PHILADELPHIA INSISTED UPON PUSHING FOR A COURT ORDER IN 1975 REQUIRING THAT THIS CONVICT BE RETURNED TO THE GENERAL PRISON POPULATION AT CRATERFORD. --- THUS, ONE LESSON THAT MUST CERTAINLY BE TAKEN FROM THIS SITUATION IS THAT NEVER AGAIN SHOULD GOVERNMENT PERMIT "CAUSE" GROUPS, OR EVEN THE COURTS, TO PLACE THE PURPORTED RIGHTS OF VICIOUS CRIMINALS ABOVE THE SAFETY OF LAW ENFORCEMENT AND CORRECTION OFFICERS WITHOUT THE STRONGEST POSSIBLE OPPOSITION." #/

THE FACT REMAINS THAT LEGAL SERVICES WAS A CAUSE GROUP IN 1975 AND AS OF 1982 HAS SHOWN THAT THAT HAS NOT CHANGED - IN REALITY, IT HAS BECOME A HOTBED OF CAUSE RELATED ATTORNEYS WORKING FOR SOCIAL CHANGES THAT DON'T NECESSARILY BENEFIT THE GENERAL PUBLIC AND IS ESPECIALLY HARD ON THE POOR.

MUCH NEEDED TAX DOLLARS ARE BEING FUNNELED TO LEGAL SERVICES ON BOTH A STATE AND NATIONAL LEVEL. THAT MONEY IS BEING SIPHONED AWAY FROM NEEDY PROGRAMS TO HELP THE POOR AND THERE IS NO JUSTIFICATION FOR THAT KIND OF FISCAL WASTE. IT MUST BE CONSIDERED AS APPROACHING THE POINT OF FISCAL IRRESPONSIBILITY BY THE LEGISLATORS IN THE COMMONWEALTH OF PENNSYLVANIA AS WELL AS IN THE FEDERAL CONGRESS.

SWISSVALE COMMITTEE FOR QUALITY EDUCATION * 1622 BRADDOCK AVE., PGH., PA 15218

Assuming the possibility and the distinct probability that the vast majority of Legislators in Harrisburg have not the slightest inkling of what Legal Services has accomplished in their abuses of the taxpayers of this Commonwealth, not to mention the Nation as a whole, this report may be helpful.

The Legal Services Corporation Act of 1974, as amended carries certain restrictions. LSC is a private, non-profit corporation which distributes funding to some 323 LSC programs across the United States. In the Commonwealth of PA, there are 20 operating programs operating. Aside from the various Legal Services offices, there are numerous back-up and support programs established by LSC to augment the local offices. There is also the Clearinghouse Review, a publication by and for LSC centers. This publication feeds information to the LSC centers and back-up programs and they feed information back into the publication. All of this is funded by tax money.

Each year, at budget time, newspapers and other media begin to have items and programs to beg support. This is done by the method now recognized as the "heart of the poor" headlines. Any legislator worth his salt will be touched by the suffering of others and will almost automatically want to help alleviate that suffering. But the legislators in this State and in Washington have been duped by one of the best and most completely organized private corporations ever to exist.

We now find Legal Services operating completely unchecked and uncontrolled in spite of restrictions placed on the by Congress. LSC (and its local program LSC offices) is not permitted to engage in desegregation cases under their National Charter. And yet, we see the "Hoots" case in full swing in Allegheny County. The costs so far on the almost 11 years of litigation have reached almost unheard-of proportions. The best "guesstimate" is an overall \$10,000,000. All expenses borne by the taxpayers in 12 municipalities for their local school districts as well as by the other municipalities contained in at least 3 more school districts who were defendants in the case until April 28, 1981. There is also the cost to the taxpayers in the State and Nationally because Neighborhood Legal Services is funded by tax dollars.

The costs of the ACORN vs Port Authority of Allegheny County were estimated to be in excess of \$500,000 in August, 1981, and the case had been in litigation for under a year. To quote Judge Stephen A. Zappala of Commonwealth Court, "The actual losers in this case are the ones that are footing the bill - namely the taxpayers. NLSA attorneys, PAT lawyers and court personnel are all paid with government money."

The Whitman Park case in Philadelphia would appear to be a good example of abuses of tax money. In that case, Community Legal Services filed suit in March, 1981, for reimbursement of legal fees of \$4,505,255.63! All coming from the City of Philadelphia. Tax money paid the salaries and court costs of all CLS attorneys, the operation of their offices, the salaries of the judges, court personnel and all others involved in that case. The CLS appropriation(grant) from LSC in Washington was \$2,277,972 in fiscal year 1980 and they then filed for the taxpayers again to pay them almost twice their annual grant.

If class action cases represent so little of their legal work, as they claim, how then can those figures be explained?

In August, 1981, I and three others filed a suit against Neighborhood Legal Services, Pittsburgh, regarding their turning-away of clients in need of legal help. We had found that many people were calling the NLSA offices seeking that help to which they were supposedly entitled and were being told that no clients were being taken. We attempted to determine who the directors of the NLSA program were and found that information not available at any turn. Letters, phone calls, contacts with LSC offices all were to no avail.

As a non-profit corporation, chartered in Pennsylvania, that information was supposed to be public record and yet it was not. As a result, we filed interrogatories, requesting that information and some further. It is a matter of State law (PA Supreme Court, 1974), that "expert" witnesses and research costs by those "experts" must be borne by the client in the action. In the "Hoots" case, NLSA had contracted with HGH Associates of Spring, Texas, to provide a plan of consolidation of many school districts. The costs of that plan were in excess of \$50,000 and a retainer of \$17,500 was paid by NLSA along with expenses for a few days of testimony in April, 1981. Again, in the ACORN vs. PAT case, an engineering student was paid \$6000 by NLSA to come up with a whole new fare system and route system for the transit authority.

Though suit was filed in Allegheny County Court of Common Pleas, NLSA immediately took the case to Judge Gerald Weber of the U.S. District Court. They claimed interference with their continuing litigation on the "Hoots" case and specifically ignored the Port Authority action. Upon our request for a motion to Remand the case back to the local court, NLSA then requested a dismissal from Judge Weber, citing themselves as Federal officers and not answerable to the public. Judge Weber, instead of remanding the case, dismissed it, stating that the case was not properly in the jurisdiction of the Federal Court and was properly answerable in State Court.

We have appealed his ruling to the 3rd U.S. Circuit Court of Appeals and requested oral arguments. However, though we are the taxpayers footing the bill for NLSA and the Courts, we must retain a private attorney to handle our suit. We have raised the money by going from door-to-door and asking for donations. The people in our area are paying from their own pockets for this suit, hoping to get some answers. Now, we have the National Legal Aid and Defenders Association filing an Amicus brief on behalf of NLSA in the 3rd Circuit. NLADA is one of the back-up centers of Legal Services and is again supported by tax money from the public coffers.

As private citizens, we have been attempting to get some answers to questions that are important to people in this area particularly and should be important to everyone.

In Iowa, there is a suit in the Federal Courts against Iowa Legal Services due to lobbying activities of the LSC offices there. That suit was brought by five U.S. Senators, two U.S. Congressmen and a State Senator from Iowa. In that suit, Legal Services states that since they operate under State Charter of the laws of Iowa, they must be sued in State Court and the case should not be handled in Federal Court. Yet here, Legal Services states that they cannot be sued in State Court but that all questions must be handled by Federal Court.

It is "Budget" time again, and the "heart of the poor" articles and programming is appearing...again.

We will be lambasted with the statements again of NLSA in Pittsburgh handling 20,000 clients last year. Nationally the statements seem to be hitting the area of 1,000,000. Yet nobody seems to challenge those figures. Nobody asks for an accounting of the client case-load. No proof is offered by Legal Services and none is ever demanded by our Legislators. No justification is ever requested or required of the Legal Services Corporation. As long as they are fully funded, they are self-perpetuating and will just eat-up the money. They will continue class action suits to the detriment of the poor. They will siphon their money into the impact litigation and ignore the real needs of the poor.

We find Neighborhood Legal Services in Pittsburgh now involved very heavily in a national group calling itself the Fair Budget Coalition. That group recently began a campaign calling for the impeachment of the President of the United States and is actively involved in working at organizing groups of political activists, social reform groups, voting registration activities and leading the way using the legal system. We are finding that Legal Services Corp. is involved nationally and through its back-up centers is effecting many social changes thru the courts rather than at the ballot box where the majority of people think those changes should be occurring.

Legal Services Corp. is not permitted, by its charter, to be involved in any politically active groups, is not permitted to be involved in the types of impact litigation that is affecting everyone in this Country. Yet they are involved and they defy you to do anything about it. They have forgotten what they were chartered to do and have gone about the business of creating laws by manipulating sympathetic judges and ignoring the legislature both here in Pennsylvania and across the nation. There are alternatives to Legal Services Corp. and those alternatives must be pursued to give the legal help to those in need without the abuses to which we have become so accustomed.

Pennsylvania is one of the very few States to fund Legal Services from the Tax Coffers. Hopefully, that will end. I invite you to thoroughly read the appendices attached to learn fully just a few of the misuses and abuses of the money that this State has given to Legal Services.

As a final note : Citizens are under no legal compulsion to take any interest or share in the government, or to insure that the political setup in city, State or Nation shall be efficient, progressive or even honest. But the absence of legal compulsion cannot absolve them of moral responsibility. Those who fail to make use of their political liberty can hardly be called good citizens, and on them falls the penalty for their negligence - they will get a government just as bad as they deserve. If the citizens fail too long and too fully to exercise their political liberties, they may even lose them. As G.K. Chesterton said, "A despotism may almost be defined as a tired democracy. As fatigue falls on a community the citizens are less inclined for that eternal vigilance which has truly been called the price of liberty, and they prefer to arm only one single individual to watch the city while they sleep."

I prefer to remain awake and attentive but to watch closely what the elected legislators of this Commonwealth may do with the money that I have worked so hard to earn.

I prefer to be optimistic about the future, but find it a very difficult task when I see the rights of people being treated lightly or ignored completely so that a "Cause" oriented lawyer being paid with my hard earned money can make changes creating an atmosphere of anarchy.

It is time for the Legal Services Corporation to be eliminated and replaced with people truly concerned for the welfare of the poor. We can make a start in Pennsylvania and become a national leader in removing a very serious and dangerous national blight.

LEGAL SERVICES CORPORATION / NEIGHBORHOOD LEGAL SERVICES (among others)
INFORMATIONAL DATA SHEET

Legal Services Corp. distributes grants to some 323 Legal Services programs in approximately 1450 neighborhood offices in the 50 States, the District of Columbia, Puerto Rico, Virgin Islands and Micronesia. In their February, 1981 news release, they listed approximately 6200 lawyers and 2830 paralegals on their payroll.

The Pennsylvania Legal Services Corp. operates 20 different legal services centers - Neighborhood Legal Services Assn. (NLSA) is but one. NLSA covers a 4 County area - Allegheny, Beaver, Butler and Lawrence Counties - and has 72 paid attorneys on its staff. In a recent news interview, the director of NLSA stated that locally they have represented 19,000 clients in 1981! With 72 attorneys, that represents 263.888 clients each!. Estimating a 5 day work-week, 52 weeks a year, no time-off for holidays, vacation, illness or personal reasons, there are 260 work-days in a year. That means that each of the 72 attorneys had to have handled more than 1 case each day without a break of any kind - unless they were estimating "classes" in their client totals.

There is sufficient reason to question the existence of Legal Services Corp. both nationally and on a local/state level. Following are some of the reasons for curtailment or abolishment of this private corporation funded by Federal and State tax dollars: LSC lawyers have sued to:

1. remove South Boston High School from jurisdiction of elected school committee and placed in receivership.
2. force Ann Arbor (Michigan) School District to recognize "Black English" as a foreign language.
3. prevent the Florida Dept. of Education from requiring a passing grade on a "functional literacy" test as a pre-condition to receiving a high school diploma.
4. uphold quotas through filing of an amicus brief on behalf of the board of Regents of Univ. of California in the Bakke case.
5. stop the same Board of Regents from pursuing research and invention of more productive farm machinery.
6. Require expulsions from a Newburg, NY Jr. Hi School on a quota basis (i.e., proportional to the numbers of white and black students in the school population) without regard to the facts in each expulsion case.
7. force an out of court settlement, requiring Alaska to spend \$40.6 million to provide a high school in every Alaskan village requesting one.
8. overturn a school board election in Hereford, Texas.
9. forced two-way busing of kindergarten children in the Albert Gallatin School District in Uniontown, PA in apparent violation of the supposed prohibition against LSC lawyers being involved in desegregatory suits.
10. overturn the Santa Ana, CA unified school district Board's decision to terminate a school breakfast program.
11. represented Iranian students at Texas Tech to overturn a local denial of permit to march past the home of Reza Pahlavi, son of the late Shah of Iran.
12. sue to force the U.S. Dept. of Health, Education and Welfare to pay for the sterilization of a teenage girl in Utah.
13. sued to force the Social Security Administration to pay disability benefits to a man while going thru a sex change operation.
14. sued to have the Iowa Dept. of Social Services pay for a patient's sex-change operation.
15. sued to stop Massachusetts Governor Edward King's efforts to reduce welfare fraud.
16. representing ACORN, sued to halt fare increases proposed by SEPTA (Southeastern PA Transportation Authority) in Philadelphia.
17. representing ACORN, sued to roll-back and restructure fares, riding zones and to eliminate all passes and student fares in the Port Authority of Allegheny County, regardless of increased costs and inflation.
18. represented five Western PA students seeking to avoid prosecution for defaulting on student loans received from PHEAA.

*Note: NLSA has indicated a client count of 19,000 in some instances and 20,000 in others. There is no real way to tell just how many they have actually represented - as few as 100 or as many as they say(?)

-2-

THE FOLLOWING IS A LIST OF SOME OF THE CLASS-ACTION CASES FILED BY THE VARIOUS LEGAL SERVICES RECIPIENT OFFICES IN PENNSYLVANIA. BEAR IN MIND THAT THESE ITEMS DEAL ONLY WITH ACTIONS FILED IN THIS COMMONWEALTH AND NOT OTHERS ACROSS THE COUNTRY. NOTICE THE NUMEROUS CASES IN THE FEDERAL COURTS AND A PATTERN BEGINS TO APPEAR. WHENEVER A FEDERAL COURT IS ACTED UPON, IT BECOMES PRECEDENT ACROSS THE ENTIRE UNITED STATES. A CASE DECIDED IN THE FEDERAL COURT FOR THE MIDDLE DISTRICT OF PA WILL HAVE REPERCUSSIONS IN UTAH, VERMONT, GEORGIA. A CASE DECIDED IN THE FEDERAL COURT IN CALIFORNIA OR OREGON WILL HAVE REPERCUSSIONS IN PENNSYLVANIA.

PROOF SOURCES AND BACK-UP MATERIALS ARE SUBMITTED AS APPENDICES TO THIS REPORT.

- Dec., 1979 - Pope vs. Crawford Co. School Dist - (PA Ct.) #2
Class Action case being handled by the Center for Law & Education, Cambridge, Mass. - challenging classifications of exceptional children.
- Jan., 1980 - Lawson vs. Coon (Federal Ct.) #3
Class Action case being handled by Northern PA Legal Services Assn., Pgh., PA representing plaintiffs and intervenors - being handled by 3 NLSA attorneys - in a landlord-tenant eviction case.
- May, 1980 - Iyocb vs. Blakeley Borough - (Federal Ct.) #4
Class Action case being handled by Northern PA Legal Services, Scranton, PA - against PA Electric Utility for termination of services due to non-payment of delinquent bills (in spite of set guidelines and regulations set forth by the PA PUC)
- Oct., 1980 - Chester Upland School Dist. vs. Chester Upland Education Assn. - PA Ct.) #5
Class Action intervention being handled by Delaware Co. Legal Assistance Assn., Chester, PA - in a legal strike.
- 1980 - PA PUC in re Limerick Investigation #6
Class Action - Three (3) Philadelphia citizens groups represented by Community Legal Services, Philadelphia, PA, proposing a massive conservation program be undertaken by Phila. Electric Co. instead of the completion of the Limerick power plant already under construction.
- Jan., 1981 - Miller vs. Kurtz (Federal Ct.) #7
 Northern PA Legal Services, Scranton, PA, representing the plaintiff challenging the constitutionality of the seizure of plaintiff's money at the time of his arrest on drug-related charges and the relinquishment of those funds to the IRS for back taxes.
- Feb., 1981 - Fisher vs. PA Dept. of Public Welfare (Commonwealth Ct.) #8
 Womens' Law Project, Philadelphia, PA #80
Class Action case challenging the State's law regarding abortion payments under its medicaid funding.

- March, 1981 - In re Phila. Electric Co. (PA PUC) #9A + #9B
Community Legal Services, Philadelphia, PA - representing a protest consumer group filing exceptions to a decision allowing Phila. Electric Co. to refund overcharges by an adjustment in its next year's energy cost rate and asked the PUC to withhold acceptance of the decision.
- Apr., 1981 - Ormiston vs. PA Unemp. Compensation Bd. of Review (PA Ct.) #10
Northern PA Legal Services, Scranton, PA - representing a client who stated she would pursue a job only if she could be sure that it would not interfere with her continued receipt of benefits.
- March, 1981 - Boarding Home Advocacy Team vs. O'Bannon (Federal Ct.) #11
Class Action case being represented by Developmentally Disabled Advocacy Project and Community Legal Services, Phila., charging the City of Phila. and State of PA have a duty to provide continuing services to de-institutionalized residents.
- Apr., 1981 - Burns vs. Schweiker - (Federal Ct.) #12
Neighborhood Legal Services, Pittsburgh, PA representing client in re SSI benefits reduction.
- May, 1981 - Coughlin vs. PA Dept. of Public Welfare - (Federal Ct.) #13
Community Legal Services, Phila., PA - representing plaintiff seeking recovery of SSI benefits and recouping his public assistance benefits after having the debt discharged in a bankruptcy.
- 1981 - Williams vs. Lackawanna County Prison - (Federal Ct.) #14
Class Action case with Northern PA Legal Services, Scranton, PA representing inmates of Lackawanna County Prison challenging conditions, practices and procedures of the prison. Plaintiffs seeking preliminary injunction to enjoin the County Prison from "continuing to violate plaintiff's due process rights, from further inflicting cruel and unusual punishment upon them."
- Dec., 1979 - Vecchione vs. Wohlgemuth - (Federal Ct.) #15
a private attorney and a Legal Services office received approximately \$200,000 in attorneys fees for their efforts on behalf of the plaintiff.
- May, 1979 - Doe vs. Jennings - (Federal Ct.) #16
Neighborhood Legal Services, Pittsburgh, PA - forced a Pgh. jail to transport an inmate to a hospital for an abortion.
- June, 1981 - ACORN vs. SEPTA (State Ct.) #17
Class Action suit being handled by Community Legal Services, Phila., PA representing a "group" to halt fare increases.
- 1979 - Neighborhood Legal Services, Pgh., representing inmates of the Allegheny County Jail in a class action suit which led to the creation of a mental health unit in the jail and could ultimately lead to a court order to build a whole new facility. #18

- Jan., 1982 - Inre; Pennhurst Home case - Comm. of PA Defendants (Fed. Ct. ^{#19A}
Class action suit being handled by Community Legal Services, ^{#17B}
 Phila., PA. Case still in appeals process in Third Circuit Ct.
 but Federal Dist. Judge imposed a \$10,000 per day fine on the
 Comm. of PA and accumulated \$1,200,000 to pay for Special
 Master's Office. Fine lifted 1-10-82 as enough money was
 collected to pay Special Master.
- Jan., 1982 - Suit against Lackawanna County Commissioners brought by ^{#20}
 Northern PA Legal Services, Scranton, PA - in Federal Court
 seeking a temporary restraining order against the commissioners
 for awarding a contract to a private law firm.
- June, 1981 - Class Action suit filed in (Federal Ct.) - plaintiffs ^{#21}
 represented by Neighborhood Legal Services, Pittsburgh, PA -
 suit against the Comm. of PA, Governor Thornburg, State
 Treasurer Dwyer and Secty. of Welfare O'Bannon - regarding
 welfare check delays caused by lack of money in the State
 Treasury - Plaintiffs were PA Welfare Rights and W.PA Welfare
 Rights organizations.
- Sept., 1981 - (Quoting from Pittsburgh Press of Sept. 6, 1981) ^{#22}
 "Because she quit her job in a Harrisburg massage parlor on
 the advice of her attorney --an out of work bookkeeper claims
 she is entitled to unemployment benefits.-----
 The case has been quietly shuttled back and forth between the
 PA Dept. of Labor & Industry and Commonwealth Court for the
 past 3 years and is now in the State Supreme Court.
 The woman's attorney from Central PA Legal Services urged the
 woman to resign from her job to "improve her prospects for a
 lenient sentence" in a case in which she was found guilty of
 promoting, conspiring to promote and conspiring to commit
 prostitution."
- Jan., 1982 - U.S. Supreme Court rejected an appeal filed by NEIGHBORHOOD ^{#23}
 LEGAL SERVICES, Pittsburgh, PA (Class Action) on behalf of
 five W.PA students seeking to avoid prosecution for defaulting
 on their student loans from the PA Higher Education Assistance
 Agency (PHEAA).
- Nov., 1981 - Community Legal Services, Philadelphia, PA representing ^(#24)
 two Welfare Rights organizations in class action suit brought
 in Federal Court attempting to overrule legislation voted into
 law in the FEDERAL LEGISLATURE governing welfare. U.S. Dist.
 Judge ruled in favor of CLS establishing a national precedent.
 In Dec., 1981, a stay on the decision was granted by 3rd U.S.
 Circuit Court of Appeals because the State Legislature was
 legally responding to Federal Policy.
 In Jan., 1982, the panel of 3 judges on the 3rd Circuit overruled
 the District Court judge's decision and allowed the Federally
 mandated cutbacks.

- #24
- Jan., 1982 - Smith vs. Welfare Secty..O'Bannon; Allegheny Co. Commissioner: Hunt, Wecht and Foerstor; Allegh. Co. Common Pleas Court judges Wettick, Johnson and Novak; Dir. of Children & Youth Services Thomas Carros
Class Action suit filed in Federal Dist. Court requiring that plaintiff be provided with services of an attorney in a child dependency hearing. Suit charges violation of civil rights under the 14th Amendment. (Neighborhood Legal Services, Pgh.)
- June, 1971 - Hoots vs. Commonwealth of PA (Federal Court)
 Neighborhood Legal Services, Pittsburgh, PA - representing plaintiffs charging violation of civil rights - racial discrimination in formation of a school district in eastern Allegheny County. Case still in appeals process.
- Aug., 1981 - in re: Hoots vs. Comm. of PA
 Neighborhood Legal Services, Pittsburgh, PA -
 filed formal challenge when former Edgewood High School Band planned to march in a Community Day parade; objected to the usage of any musical instruments or sheet music which might have been used in the former high school. #25
- Sept., 1981 - in re: Hoots vs. Comm. of PA
 Neighborhood Legal Services, Pittsburgh, PA -
 filed challenge to voting regions established in the 12 municipalities comprising the new school district #26
- Dec., 1981 - in re: Hoots vs. Comm. of PA
 Neighborhood Legal Services, Pittsburgh, PA -
 filed motion in Fed. Court for discovery - demanding all information on students in new school district and for the past 3 yrs. in the five former districts requiring disclosure on: names, address, race of all students involved in any extracurricular and/or sports activities, school clubs, honor societies, social functions, special ed classes, etc. #27
- Oct., 1980 - ACORN vs. Port Authority of Allegheny County - (State Ct.)
Class Action suit with Neighborhood Legal Services, Pittsburgh representing the plaintiffs challenging fare increases in the transit Authority. (still in appeals at this time).
 As of August, 1981, the costs of this case were astronomical!

#2
FOR IMMEDIATE RELEASE

NOV 6 1981

GOVERNOR'S PRESS OFFICE
COMMONWEALTH OF PENNSYLVANIA
CONTACT: Paul Critchlow
Press Secretary
(717) 783-1116

HARRISBURG (Nov. 2) — Gov. Dick Thornburgh today expressed his gratitude at the safe release of the remaining hostages at Graterford State Prison.

"I am sure that all Pennsylvanians joined me in our prayers on behalf of these hostages and their families," the governor said.

"While we have achieved the most important result of obtaining the safe release of the hostages, there are lessons for the future to be learned from this situation which should not be ignored," he added. The governor said he believed there were at least four such immediate lessons.

"The ringleader in the attempted escape and hostage-taking is a three-time convicted murderer," he said. "He murdered a police officer and, while in prison, murdered a warden and deputy warden. Nevertheless, Community Legal Services of Philadelphia insisted upon pushing for a court order in 1975 requiring that this convict be returned to the general prison population at Graterford. More disturbing, the Shapp

administration agreed to have this order entered over the strong objections of its own professional correction officials.

"Thus, one lesson that must certainly be taken from this situation is that never again should government permit 'cause' groups, or even the courts, to place the purported rights of vicious criminals above the safety of law enforcement and correction officers without the strongest possible opposition.

#1

**Student Seeks Damages for Alleged Inappropriate
Placement in Special Education Classes**

#2

29,903. Pope v. Crawford Central School District (Pa.) C.P., Crawford County, filed Dec. 10, 1979). For further information contact Robert Pressman, Center for Law and Education, Gutman Library, 6 Appian Way, Cambridge, MA 02138, (617) 495-4666. [Here reported: 29.903A Complaint (15pp.).]

Plaintiffs, a former special education student and his mother, complain that the student was tested and placed in a special education program in 1969 without notice to or the consent of the student or his mother. It was not until 1977, after the student graduated from high school, that plaintiffs learned that he had been classified as an exceptional child. Plaintiffs seek damages for alleged violations of Pennsylvania education law, the Education for All Handicapped Children Act, and the fourteenth amendment.

OCTOBER 1980

CLEARINGHOUSE REVIEW

LANDLORD/TENANT

**Judicial Determination of Voluntariness of
Confession of Judgment Clause in Lease Is
Required Before Ejectment**

29,650. *Lawson v. Coon* (W.D. Pa., Jan. 29, 1980). Plfs-Intervenors represented by Timothy O'Brien, James Beck, Thomas Reed, Neighborhood Legal Services, 535 5th Ave., Pittsburgh, PA 15219, (412) 255-6700. [Here reported: 29,650A Brief in Support of Prelim. Relief (15pp.); 29,650B Supp. Brief (25pp.); 29,650C Transcript of Oral Opinion (8pp.); 29,650D Order (2pp.); 29,650E Order (1p.).]

A district court has permanently enjoined county officials from entering or executing confessed judgments in ejectment until there has been a judicial determination that the tenant knowingly and intelligently agreed to the confession of judgment clause in the lease. In an oral opinion, the court reasoned that although a confessed judgment is not prima facie unconstitutional, there is a great disparity in bargaining power in the landlord/tenant relationship. Citing *Overmeyer v. Frick*, 405 U.S. 174 (1972), the court found that a tenant's right under a lease is a property right protected by the fourteenth amendment which can only be waived knowingly and intelligently.

The court's order requires that the tenant be given notice of the landlord's intent to confess judgment in ejectment, a reasonable opportunity to contest the voluntariness of the confessed judgment clause, and upon entry of the judgment, the tenant must be notified that he has a right to collaterally attack the judgment under state law.

OCTOBER 1980

CLEARINGHOUSE REVIEW

PUBLIC UTILITIES

Suit Charges Utility Termination Procedures Violate Due Process

29,913. Iyooob v. Blakely Borough (M.D. Pa., filed May 2, 1980). Plaintiffs represented by Randolph Bragg, Ira Goldberg, Northern Pennsylvania Legal Services, 507 Linden St., Scranton, PA 18503, (717) 342-0184. [Here reported: 29,913A Complaint (6pp.); 29,913B Brief in Support of Plf's Motion for TRO (5pp.); 29,913C Brief in Support of Motion to Waive Security Required for Inj. (1p.).]

A section 1983 class action suit has been filed against a Pennsylvania electric utility. Plaintiffs charge that electric service to customers in arrears on their bills is terminated without notice or an opportunity for a hearing in violation of the due process rights guaranteed by the fourteenth amendment. The case arose when defendants terminated the electric service of the named plaintiff. Plaintiff has five children, two of whom have medical conditions affected by the lack of electricity.

Clearinghouse Review

JUNE 81

Striking Teachers Ordered to Return to Work and to Continue Bargaining

30,683. *Chester Upland School District v. Chester Upland Education Ass'n* (Pa. C.P., Delaware County, Oct. 20, 1980). Petitioners represented by Ann Torregrossa, Mary Seminario, Thomas Hamilton, Delaware County Legal Assistance Ass'n, 410 Welsh St., Chester, PA 19013, (215) 874-8421. [Here reported: 30,683A Complaint (20pp.); 30,683B Order (1p.); 30,683C Stipulation (5pp.); 30,683D Order (2pp.); 30,683E Order with Memo (3pp.); 30,683F Petition to Intervene (4pp.); 30,683G Order (2pp.).]

The court ordered striking teachers back to work under the terms and conditions of the prior year's contract. Furthermore, the court required that a majority of the school board continue on a daily basis to negotiate with the teachers union. A group of parents and students sought to intervene and have the teachers union and the school board cited for contempt

for violation of previous orders mandating a return to work and payment of salary increments pending an arbitration decision. The court dismissed the group's motion without prejudice, but it granted them amicus curiae status for any further proceedings.

AUGUST/SEPTEMBER 1981

Citizens' Groups Seek to Substitute Conservation Program for Completion of Nuclear Plant

31,158. In re Limerick Investigation (Pa. P.U.C. 1980). Complainant represented by Steven Hershey, Community Legal Services, Sylvania House, Juniper and Locust Sts., Philadelphia, PA 19107; (215) 893-5300. [Here reported: 31,158A Testimony (45pp.); 31,158B Testimony (14pp.); 31,158C Testimony (5pp.); 31,158D Testimony (6pp.).]

Three Philadelphia citizens' groups are proposing that a massive conservation program be undertaken by Philadelphia Electric Company (PECO), instead of its completion of the Limerick nuclear power plant. Their expert witnesses testify that conservation (1) would be more beneficial to PECO's customers and stockholders than completion of the nuclear plant, (2) is a more effective way of producing the needed power, (3) would result in many more jobs than the nuclear plant would provide, and (4) would make PECO (which is allegedly in poor financial condition) more attractive to investors. The citizens' experts emphasize the effectiveness of conservation in bringing about fast results as compared to nuclear construction.

CLEARINGHOUSE Review
JUNE 81

Police May Seize an Arrestee's Money and Relinquish It to IRS Without Notice or Hearing

27,177. *Miller v. Kurtz* (M.D. Pa., Jan. 28, 1981). Plaintiff represented by Randolph Bragg, Northern Pennsylvania Legal Services, 507 Linden St., Scranton, PA 18503, (717) 342-0184. [Here reported: 27,177F Judgment & Order (8pp.). Previously reported at 13 CLEARINGHOUSE REV. 445 (Oct. 1979).]

This suit challenged the constitutionality of the seizure of plaintiff's money at the time of his arrest on a drug-related charge and the relinquishment of those funds to the IRS without written notice or hearing to plaintiff. The court held that it has long been held that due process does not entitle an individual to a hearing prior to an arrest based upon probable cause nor does it require a hearing to a person whose property has become evidence of a crime. As to plaintiff's argument that he was denied due process because the notice of levy was mailed to his home even though defendants knew he was in prison, the court noted that plaintiff admitted that he was aware of the levy against the property and he did not allege that he suffered any prejudice because the notice was sent to his home. The court stated that if plaintiff felt that the Internal Revenue Code has been violated, he has a right to bring suit under section 7422 claiming that the tax has been "erroneously or illegally assessed or collected." Citing *Phillips v.*

Commissioner, 283 U.S. 589 (1930), the court upheld the summary seizure of the money allegedly owed as taxes since plaintiff had been given two years in which to challenge the assessment or collection of the tax.

Clearinghouse Review

JUNE 81

Expectant Mothers Challenge Law Restricting State Funded Abortions

31,090. *Fischer v. Pennsylvania Dep't of Public Welfare* (Pa. Commw. Ct., filed Feb. 12, 1981). For further information contact Kathryn Kolbert, Women's Law Project, 112 S. 16th St., Philadelphia, PA 19102, (215) 564-6280. [Here reported: 31,090A Petition (29pp.).]

Plaintiffs have filed a class action seeking declaratory and injunctive relief from enforcement of a Pennsylvania law which prohibits expenditure of state funds for abortions except where a doctor has certified that the mother's life would otherwise be endangered or where a rape or incest victim has promptly reported the incident to law enforcement or health officials. Plaintiffs include pregnant women with serious medical problems. Their doctors have determined that abortions are medically necessary but they cannot certify that the abortion is necessary to save their patients' lives. Also named as plaintiffs are doctors, health organizations, and church leaders. Plaintiffs allege that the law violates their equal protection rights, free exercise of religion and conscience and privacy rights under the state constitution.

Hgh. Post Gazette
2-16-82

Abortion Lawsuit To Be Reargued

HARRISBURG (UPI) — Commonwealth Court has scheduled a second round of oral arguments for March 2 in a lawsuit challenging the legality of a 1980 law that would block the use of public funds for most Medicaid abortions in the state.

The judges did not give a reason for seeking the reargument, which will be heard in Philadelphia. Original arguments were heard by the court four months ago.

The suit, filed by the Women's Law Project of Philadelphia, seeks to overturn a law passed by the legislature and signed by Gov. Dick Thornburgh that would stop most women with low incomes from getting Medicaid assistance to pay for abortions.

The law would prohibit the spending of state Medicaid funds for abortions except in cases of rape, incest or when the abortion is needed to save the pregnant woman's life.

Commonwealth Judge John A. MacPhail blocked implementation of the law Aug. 9, seven days before it was to go into effect, pending the outcome of the suit.

Susan Cary Nicholas, managing attorney of the Women's Law Project, said the court's request for further arguments is not "highly unusual" because the case involves interpreting the state's constitution.

However, Rep. Stephen F. Freind, R-Delaware, a sponsor of the Medicaid funding cut-off for abortions, said the court's request was "very irritating" because the law was passed in 1980, but women have been getting Medicaid funding for abortions for another year.

In 1980, the state Department of Public Welfare paid out more than \$3 million to 12,467 women who qualified for Medicaid-funded abortions.

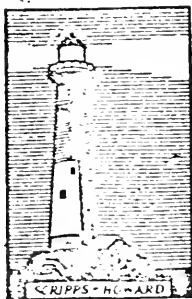
Clearinghouse Review

JUNE 81

Consumer Group Challenges \$35 Million Electric Utility Overcharges

31,130. *In re Philadelphia Electric Co.* (Pa. P.U.C., filed Mar. 31, 1981). Protestor represented by Mark Segal, Community Legal Services, Sylvania House, Juniper & Locust Sts., Philadelphia, PA 19107, (215) 893-5300. [Here reported: 31,130A Exceptions of Protestant Consumer Educ. & Protective Ass'n Internat'l, Inc. (5pp.).]

A consumer group has filed exceptions to an administrative law judge's (ALJ) decision allowing Philadelphia Electric Company to "refund" \$35 Million in overcharges by an adjustment to its next year's Energy Cost Rate. The consumer group argues that this method of "refunding" in effect grants the utility a loan at much less than market interest rates. (Although the adjustment would include an amount for interest, it would not be at market rates.) Consumers also argue that persons who are no longer customers of the utility would not receive a refund in any form. The consumers are seeking to have the state's utility commission withhold acceptance of the ALJ's decision.



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Give Light and the People Will Find Their Own Way

Page B-2

Tuesday, February 16, 1982

Watchdog's Bite

Talk about dialing a wrong number!

A consumers' group in Philadelphia has launched a fight against a \$426-million rate increase asked by Bell Telephone Co. of Pennsylvania. Now, it wants others — including Bell — to help pick up the tab.

Specifically, the Consumers Education and Protective Association has asked the Public Utility Commission to require Bell to add a \$1 charge to each of its customers' bills.

The funds thus collected would be turned over to the association to use in opposing Bell's bid for higher rates.

Bell customers would have the option of refusing to pay that \$1 charge, according to the association's proposal. But how many would overlook any fine-print advisory and pay without realizing it?

★ ★ ★

In any event, the plan is presumptuous.

So is the claim that the association speaks for and deserves the unquestioning support of most other Pennsylvanians. That assessment

has nothing to do with the merits of the Bell case.

The idea that any self-proclaimed do-good group deserves to have its bills paid by somebody else — with the complicity of a government agency and with the forced compliance of its targeted victim — borders on the incredible.

★ ★ ★

What may be even more incredible is this:

The PUC was formed in 1937, in part, to protect the consumers from the utilities. Almost 40 years later, the state Office of Consumer Advocate was established to protect the consumers from the PUC.

Now comes a group of Philadelphians to say, in effect, that neither the PUC nor the consumer advocate's office — both supported by taxpayer funds — can be counted on to protect the consumers in the Bell case.

If this is so, the remedy is in the overhaul of the PUC and the consumer advocate's office. Not in the forced public funding of every ad hoc group which claims to speak for others but cannot marshal their direct support.

Appeals Council Reverses ALJ Denial of Disability Benefits

31,190. *In re Pierce* (Soc. Sec. Adm'n Office of Hearings & App., Apr. 9, 1981). Claimant represented by Bill Zoske Managing Legal Worker, Southeast Mississippi Legal Services, P.O. Drawer 1728, Hattiesburg, MS 39401, (601) 545-2950. [Here reported: 31,190A Claimant's Brief (8pp.); 31,190B Decision of App. Council (2pp.).]

The appeals council reversed the decision of the administrative law judge (ALJ) and awarded claimant supplemental security income based on disability. The ALJ had determined that claimant failed to establish that his impairments were severe enough to entitle him to benefits. Claimant suffers from visual and auditory hallucinations, has an IQ of 71, a social age of 15 years, cannot read or write, and is not capable of handling his own funds. Claimant became unable to work because of back pain, nerves, no right eye, a mild problem with his left eye, weakness and a slight speech impediment. On appeal, claimant argued that the ALJ erred in (1) going outside the record and giving his lay opinion regarding claimant's maladies, (2) concluding that claimant's allegations of pain were not credible, (3) failing to properly consider the medical evidence, and (4) failing to consider the cumulative effect of all claimant's problems on his ability to work.

UNEMPLOYMENT COMPENSATION

Supreme Court Awards Benefits to Jehovah's Witness Who Voluntarily Quit Weapons Manufacturing Job

25,702. *Thomas v. Indiana Employment Security Division Review Board* (U.S. Sup. Ct. Apr. 6, 1981). Petitioner represented by Seymour Moskowitz, Indiana Civil Liberties Union, Valparaiso Law School, Valparaiso, IN 46383, (219) 464-5012; Blanca de la Torre. [Here reported: 25,702-1 Opinion (23pp.). Previously reported at 14 CLEARINGHOUSE REV. 394 (July 1980).]

The United States Supreme Court held that denial of unemployment compensation benefits to petitioner, a Jehovah's Witness who voluntarily quit after being transferred to his employer's weapons division, violated his first amendment right to free exercise of religion under *Sherbert v. Verner*, 374 U.S. 398 (1963). Rejecting the Indiana Supreme Court's analysis of petitioner's religious beliefs, the court noted that the guarantee of religious freedom is not conditioned on the ability to articulate precisely one's beliefs or the sharing of such beliefs by all members of the religious sect. Furthermore, absent a compelling state interest, the court ruled, a person may not be compelled to choose between the exercise of a first amendment right and participation in an otherwise available public program. The court held that the state's interest in avoiding problems resulting if people were permitted to leave jobs for personal reasons and in avoiding a detailed probing by employers into job applicants' religious beliefs are not sufficiently compelling to justify the burden

on petitioner's religious liberty. Finally, the court held that payment of benefits to petitioner would not involve the state in fostering a religious faith in violation of the establishment clause. Justice Rehnquist was the lone dissenter.

Claimant's Conduct Discouraging Job Referral Held to Support Benefits Denial

29,017. *Ormiston v. Pennsylvania Unemployment Compensation Bd. of Review* (Pa. Commw. Ct. Apr. 3, 1981). Petitioner represented by Randolph Bragg, Northern Pennsylvania Legal Services, 507 Linden St., Scranton, PA 18503, (717) 342-0184. [Here reported: 29,017D Opinion & Order (6pp.). Previously reported at 14 CLEARINGHOUSE REV. 296 (July 1980).]

The court held that claimant's responses to the job service interviewer's referral offer were inconsistent with a genuine desire to work and be self-supporting, thus requiring a denial of benefits. The court found that claimant's statements to the interviewer that she had no car, when public transportation was available; that she had cataracts which might preclude inspection work, when she failed to explore the possibility of eliminating inspection duties from the offered job; and that she would pursue the job only if she could be sure that it would not interfere with her continued receipt of benefits were evidence that her main concern was with the uninterrupted flow of benefits rather than with obtaining a job.

Employee Who Was Suspended and Whose Reinstatement Is Conditional Upon Availability of Work Is Considered Totally Unemployed

31,210. *Kisamore v. Rutledge* (W. Va. Sup. Ct. Apr. 3, 1981). Petitioner represented by Allan Karlin, Legal Aid Society, 155 Walnut St., Morgantown, WV 26505, (304) 296-0001. [Here reported: 31,210A Brief of Appellant (21pp.); 31,210B Brief of Respondent (21pp.); 31,210C Reply Brief of Appellant (11pp.); 31,210D Opinion (14pp.).]

Reversing the trial court, the West Virginia Supreme Court held that when an employee is suspended from his employment for disciplinary reasons and his reinstatement is conditioned upon the availability of work and the taking of a physical examination, and during the suspension period the employee performs no services and no wages are payable to him from the employer, then such employee is "otherwise" separated from employment within the meaning of the state statute. As such, the court held, the employee is totally unemployed and thus eligible to receive unemployment compensation benefits.

Deinstitutionalized Mental Patients Allege That They Have Not Received Adequate Aftercare Services

31,128. Boarding Home Advocacy Team, Inc. v. O'Bannon (E.D. Pa., filed Mar. 31, 1981). Plaintiffs represented by Edmond Tiryak, Andrew Erba, Paul George, Developmentally Disabled Advocacy Project, Community Legal Services, 3156 Kensington Ave., Philadelphia, PA 19134, (215) 427-4885. [Here reported: 31,128A Complaint (13pp.).]

Plaintiffs, former residents of state mental hospitals, bring this action for declaratory and injunctive relief alleging that the state of Pennsylvania has deinstitutionalized approximately 10,000 residents from state mental hospitals into unfit and unsafe boarding homes and other facilities without providing them with appropriate aftercare services. Plaintiffs maintain that long periods of institutionalization and the administration of psychotropic drugs have made the residents less able to care for themselves when released into the community. They contend that the city of Philadelphia and the state of Pennsylvania have a duty to provide continuing services to the deinstitutionalized residents.

July 1981

- CLEARINGHOUSE REVIEW

SEPTEMBER 1981

CLEARINGHOUSE REVIEW

**Magistrate Recommends Dismissal of Suit
Challenging SSI In-Kind Reductions**

27,218. *Burns v. Schweiker* (W.D. Pa. Apr. 22, 1981). Plaintiff represented by Sandra Smales, Neighborhood Legal Services, 1312 E. Carson St., Pittsburgh, PA 15203, (412) 431-7255. [Here reported: 27,218-I Magistrate's Report, Recommendation & Order (14pp.). Previously reported at 13 CLEARINGHOUSE REV. 636 (Dec. 1979).]

The magistrate has recommended that the defendant Secretary's motion for summary judgment be granted and his decisions to reduce plaintiffs' SSI benefits be affirmed. Plaintiffs had challenged the denial, reduction or termination of SSI benefits as a result of a determination by HHS that they have received in-kind income in the form of support and maintenance because they pay less than the fair market value for the residential premises they occupy. The magistrate found that the Secretary's determination to reduce SSI benefits by an amount determined from the reasonable fair market value of in-kind benefits received is within the ambit and purposes of the SSI program. Plaintiffs have filed exceptions to the magistrate's opinion.

AUGUST/SEPTEMBER 1981

CLEARINGHOUSE REVIEW

**Action Challenges Recoupment from
SSI Benefits of Interim Public Assistance
Debt Discharged in Bankruptcy**

31,257. Coughlin v. Pennsylvania Dep't of Public Welfare (E.D. Pa., filed May 4, 1981). Plaintiff represented by Henry Sommer, Community Legal Services, 3156 Kensington Ave., Philadelphia, PA 19134, (215) 427-4850. [Here reported: 31,257A Complaint (3pp.).]

Plaintiff debtor alleges that defendant welfare department violated the injunction provisions of 11 U.S.C. §524(a) by recouping his interim public assistance benefits, the debt for which was discharged in bankruptcy, from retroactive SSI benefits. Alleging that the debt was never reaffirmed under the provisions of 11 U.S.C. §524(c), plaintiff seeks recovery of the full amount of SSI benefits.

Inmates Challenge Conditions of County Prison

31,169. Williams v. Lackawanna County Prison (M.D. Pa., filed 1981). Plaintiffs represented by Randolph Bragg, Northern Pennsylvania Legal Services, 507 Linden St., Scranton, PA 18503, (717) 342-0184. [Here reported: 31,169A Plfs' Brief in Support of Motion for Prelim. Inj. (26pp.); 31,169B Brief of Defs in Support of Motion to Dismiss (25pp.).]

Plaintiffs in this class action are inmates of the Lackawanna County Prison. They are challenging the conditions, practices and procedures of the prison, including: failure to follow disciplinary procedures, cold and drafty cells, failure to provide daily exercise, inadequate plumbing, lack of medical attention, refusal of telephone contact between inmates and their attorneys, inadequacy of law books in the library and inhumane conditions in the behavioral adjustment unit. Plaintiffs seek a preliminary injunction to enjoin the defendants from continuing to violate plaintiffs' due process rights, from denying them access to the courts and from further inflicting cruel and unusual punishment upon them.

JULY 1981

CLEARINGHOUSE REVIEW

legal rights of persons in the State who are mentally ill or otherwise mentally handicapped and describe any measure which needs to be taken to protect such rights." Legal services attorneys can use the bill of rights provisions as a benchmark in challenging inadequate state plans and rubber-stamp approvals by the Secretary of Health and Human Services.

The new mental health advocacy program (section 502) is a hybrid of the developmental disabilities protection and advocacy (P&A) model and the competitive-grant model recommended by the Senate committee. The P&A model provides a formula allocation to each state. The Mental Health Systems Act adopts a discretionary-grant approach, eliminating the requirement of advocacy as a prerequisite for other funding. The Secretary of Health and Human Services is given authority to make grants for advocacy services, similar to the authority to make grants for mental health services. A smaller number of more adequate grants and a wider range of advocacy models can be expected.

There are two basic eligibility criteria: The advocacy-grant recipient must have not only the "authority" (as under the DD Act) but also the "ability" to pursue legal, administrative and other appropriate remedies and must be "independent" of any "entity" providing treatment or services. Nothing in the Systems Act implies that only a single entity is to be funded in a state; more than one advocacy provider could be designated, recommended and/or funded. During the first year (fiscal year 1982), public or nonprofit private agencies wishing to apply for funds must be "designated" (if a state government entity) or "recommended" (if any other public agency or a nonprofit private organization) by the governor. But after the first year, any public or private nonprofit entity can apply; the governor must simply be informed of applications by entities he has not designated or recommended. The governor and "other interested persons" have a right to a hearing on such applications.

Obviously legal services and other community and state advocacy programs will be very interested in the implementation of the advocacy provisions because they represent an important new funding source. The Mental Health Law Project will try to keep the field informed of developments in the implementation of the act and to help local advocacy agencies make known their views about the grantmaking mechanism.

Key issues in implementation will be:

- defining what it takes to meet the "ability" criterion;
- determining how far removed from the direct treatment level a state-government entity must be to be "independent" and thus eligible for advocacy funds;
- the size and distribution of grants;
- the review hearing processes; and
- defining the procedures and criteria for changing, terminating or adding grantees in a state after the initial grant or grants.

2. The Civil Rights of Institutionalized Persons Act

On May 23, 1980, President Carter signed Pub. L. No. 96-247, giving authority to the Justice Department to initiate or intervene in lawsuits to enforce the constitutional and other federal rights of persons in institutions. The new law, known as the Justice Department Standing Bill (S.10 and H.R.10) during the extended effort to enact it, empowers the United States Attorney General to file a lawsuit against a state after determining the existence of a pattern or practice of denying residents of institutions their rights. Before the suit may be filed, the Attorney General must notify appropriate state officials of the specific problems under investigation and determine that all voluntary efforts at compliance have failed. Private institutions which receive federal funds or are licensed by the state are not covered by this law.

MHLP had testified several times at the request of the relevant congressional committees on the need for Justice Department protection of the rights of institutionalized mentally and developmentally disabled people. We worked closely with the coalition of organizations leading the fight for passage, including the American Civil Liberties Union, the national Mental Health Association, the National Association for Retarded Citizens and the Children's Defense Fund. This legislation is especially important because the Special Litigation Office of the Justice Department is one of the few agencies with the resources to conduct class action litigation addressing the systemic problems of institutions and state service-delivery systems.

F. Attorneys' Fees

This was a big year for the recovery of attorneys' fees in mental disability law cases. Legal services attorneys and other advocates for the mentally disabled should be aware that there is now a realistic possibility of receiving reasonable attorneys' fees for work on behalf of mentally disabled clients. The basis for the awards, of course, has been the Civil Rights Attorney's Fees Award Act of 1976, 42 U.S.C. §1988. On March 19, 1980, the United States District Court for the Middle District of Florida ordered that the attorneys for plaintiff Kenneth Donaldson receive approximately \$273,000 for their efforts on his behalf in *Donaldson v. O'Connor*, TCA 1693 (N.D. Fla.) (lawyers included the ACLU and the Mental Health Law Project). In *Vecchione v. Wohlgemuth*, No. 73-162 (E.D. Pa., Dec. 11, 1979), 4 M.D.L.R. 23 (1980), a private attorney and a legal services office received approximately \$200,000 in attorneys' fees for their efforts on behalf of the plaintiff. As part of the settlement in *Wuori v. Zittay*, Civ. No. 75-80SD (D. Me., Apr. 9, 1979), the Mental Health Law Project, Pine Tree Legal Services and a private attorney formerly at Pine Tree were awarded a total of \$110,000 for representation of plaintiffs. And in June 1980, attorneys at the National Center for Youth Law were awarded \$355,000 in fees for their representation of plaintiffs in *Morales v. Turman*, No. 1948 (E.D. Tex.). The Supreme Court's recent decision in *Maine v. Thiboutot*, ___ U.S. ___, 100 S. Ct. 2502 (1980), Clearinghouse No. 18-409, has increased the likelihood of recovering attorneys' fees in mental disability cases by clarifying that

6. Donald Lambro, *Fat City: How Washington Wastes Your Taxes*, (South Bend, Indiana: Regnery Gateway, 1980), p. 332.
7. Legal Services Corporation 1980 Annual Report, p. 25.
8. *Victoria Posada v. Lonnie Bell*, Ca-2-79-121, filed July 27, 1979. Dismissed June, 1980.
9. Lawrence Walsh, "Suit Charges Legal Services Waste," *The Pittsburgh Press*, August 19, 1981.
10. *Simer v. Olivarez*, No. 79C 3960, USDC., N.D., (filed September 24, 1979).
11. Among the taxpayer-subsidized sources of funding for NCLC are \$675,632 from the Legal Services Corporation (Legal Services Corporation Annual Report, p. 19) and \$27,400 from the Department of Energy (Dept. of Energy Office of Consumer Affairs).
12. Metzger, *supra* n. 4, p. 13.
13. H. Peter Metzger and Richard Westfall, "The Great Ecology Swindle," *Policy Review* vol. 15 (Winter, 1981), p. 72.
14. According to Legal Services Corporation's Assistant General Counsel Linda Perle.
15. Annual Report, *supra* n. 7, p. 21.
16. Steven Haberfield, "Economic Development," *Clearinghouse Review* vol. 14, no. 10 (January 1981), p. 911.
17. The Contra Costa Legal Services Foundation received \$471,155 from the Legal Services Corporation in Fiscal Year 1980. Legal Services Corporation 1980 Annual Report, p. 16.
18. *In re Evans*, (Social Security Administration, Bureau of Hearings and Appeals, September 17, 1979).
19. Annual Report, *supra* n. 7, p. 21.
20. *Id.*, p. 16.
21. "Two Complaints," *The New Republic*, (February 3, 1979), p. 5.
22. *Id.*
23. *Stevenson v. Stevenson*, No. 79-CA-1588-MR (Kentucky Court of Appeals, November 7, 1979).
24. Annual Report, *supra* n. 7, p. 18.
25. *Doe v. Jennings*, No. 79-681-D (W.D. Pa., May 23, 1979).
26. Annual Report, *supra* n. 7, p. 24.
27. Neighborhood Legal Services, Inc. received \$384,105 from the Legal Services Corporation in FY 1980. Annual Report, *supra* n. 7, p. 17.
28. Government Accounting Office Report #202116, May 1, 1981.
29. Margaret E. Wagner, ed., "Information Directory on National Support Projects," p. i.
30. *Id.*, p. 34.
31. *Merrweather v. Sherwood*, USDC SDNY, 73 Civ. 6128 (ADS).
32. Annual Report, *supra* n. 7, p. 22.
33. Testimony of James G. Sweeney, County Attorney, Orange County, New York before the U.S. House of Representatives Subcommittee on Courts, Civil Liberties, and the Administration of Justice.
34. Fred D. Baldwin, "Rising Above Principle: The Conservative Public Interest Law Firm," *The American Spectator*, August 1981.
35. "The Watt Offensive," *The Wall Street Journal*, August 28, 1981, p. 20.
36. Memorandum prepared by the Office of Management and Budget, undated, p. 9.
37. *Id.*, p. 10.
38. Act 535 of the 1981 session of the Louisiana legislature amended and reenacted Louisiana Revised Statutes 37:212(C). The legislation provides that a person could hire or designate a non-lawyer to represent him in a case involving a claim of \$1,200

Pittsburgh Post Gazette
Requirements
June, 1981

And now, Philadelphia

A community group has filed suit seeking an injunction to stop SEPTA from raising transit fares as of tomorrow. The suit was filed in Common Pleas Court by the Association of Community Organizations for Reform Now, ACORN, the same group that fought higher transit fares in Allegheny County, contends the increases approved by the SEPTA board last month are inequitable. The Southeastern Pennsylvania Transportation Authority plans to hike adult fares and transfers by a nickel, and student fares by 20 cents. All special fares also are due to rise. The suit asks that the increases be delayed until the court can determine if the current fare structure places an unfair burden on the poor.

P. G. - June, 1981

Pittsburgh Post Gazette - May 27, 1981

NLS's heart is the poor, not headlines

By Albert J. Neri
Post-Gazette Staff Writer

The Neighborhood Legal Services Association is best known for its headline-making lawsuits — segregation in the General Braddock School District; the Allegheny County Jail; and now, a restructuring of Port Authority fares.

But the independent, non-profit corporation that last year served 19,000 poor people considers such lawsuits a relatively small part of its work.

"The headline cases are not even 1 percent of what we do," says Robert Racunas, who heads the 12-office agency that serves Allegheny, Beaver, Butler and Lawrence counties.

NLSA is one of dozens of agencies nationwide that receive the bulk of their support from the Legal Services Corp., a federally funded but independent corporation.

But the Reagan administration wants to do away with the Legal Services Corp. The president has proposed eliminating the agency next year, making states and local bar associations responsible for providing legal services to the poor.

Critics of the move charge it is motivated more by Reagan's conservative ideology than by budget trimming. The Legal Services Corp. last year received \$319 million. The proposed federal budget for the next fiscal year is \$695 billion.

"This was not economical, it was political in nature," says Racunas, who joined NLS 12 years ago as a legal intern. "We were not asked to accept an across-the-board cutback like other social services. We're being eliminated."

"It's no secret that Reagan is a longtime foe of the concept of Legal Services," he said, referring to Reagan's feud with poverty lawyers

while he was governor of California. Racunas stressed that all but a handful of his agency's cases are routine — divorces, child custody, landlord-tenant disputes and welfare-unemployment payment problems.

Of the 19,000 people served last year, 70 percent were women and 15 percent elderly.

NLS has 72 mostly young, aggressive lawyers whose salaries start at \$12,000 and do not surpass \$30,000 a year — far below incomes in private or corporate practice.

"Because of our limited resources, we think long and hard before filing a class-action suit," Racunas says. Some suits, though, have had major impact:

- The NLSA suit to desegregate the General Braddock School District, begun in 1971, led to last month's federal court ruling that five east suburban districts must

merge by next fall.

- The NLSA suit on behalf of Allegheny County Jail inmates has led to creation of a mental health unit there. It could lead ultimately to a court order to build a new facility.

- A Legal Services suit led to reform of state laws on rental housing. A tenant is not required to pay his rent unless his landlord provides a "habitable dwelling."

Liberal and moderate members of Congress are hoping to save Legal Services by removing its stingier — allowing the agency to survive but greatly restricting its ability to file controversial class-action suits.

Under one congressional proposal, Legal Services lawyers would be prohibited from tackling such sensitive issues as illegal aliens, abortion and desegregation.

"We couldn't do a General Braddock again," Racunas explained.

42 U.S.C. §1983 encompasses claims based on purely statutory violations of federal law. Accordingly, prevailing parties should be able to recover fees in cases brought under such federal statutes as the Education for All Handicapped Children Act, the Rehabilitation Act, the Developmental Disabilities Assistance and Bill of Rights Act and concurrently under 42 U.S.C. §1983. Advocates for the mentally disabled should also note that in *Dixon v. Harris*, 504 F. Supp. 973 (D. D.C. 1975), the federal defendants consented to a judgment of \$280,000, payable over a five-year period to defray plaintiffs' costs in mooning a consent decree, which would otherwise have been borne by plaintiffs as litigation expenses.

Conclusion

With regard to test-case litigation, especially of a constitutional nature, the upcoming decision in *Pennhurst* should provide a basis for reassessing our strategies and tactics. Until that decision is handed down and until the *Rennie* and *Rogers* cases are decided by the Third and First Circuits,

the watchword should probably be "proceed with caution." However, much litigation of a non-test-case nature can be brought safely and it promises great benefits for our clients. One of the most fruitful areas for litigation is the Education for All Handicapped Children Act, 20 U.S.C. §§1401 *et seq.*, which specifies individually appropriate public education for all handicapped children. The Rehabilitation Act and the DD Act, as well as a growing number of progressive state statutes, offer nonconstitutional bases for litigation. On the administrative and legislative fronts, the most fruitful avenues for work in the coming year will probably be implementation of the Mental Health Systems Act, especially its provision for a national advocacy system for the mentally ill, and the reauthorization of the DD Act, which funds protection and advocacy agencies for developmentally disabled persons. Without doubt, persons who are or are alleged to be mentally disabled will keep coming to lawyers with their problems and there will be more than enough work for all concerned.

January, 1981
Cherryhouse Review —

U.S. Judge Ends \$10,000-A-Day Fine On State

PHILADELPHIA (UPI) — A federal judge has ended a \$10,000-a-day fine against the Department of Public Welfare, but says the court will retain the \$1.2 million the department already has paid for its refusal to fund the Special Master's Office in the Pennhurst home case.

The fine was imposed on Public Welfare Secretary Helen O'Bannon for contempt of court after the General Assembly — at Mrs. O'Bannon's urging — refused last spring to allocate \$900,000 to fund the office for fiscal 1982.

The office was established in 1978 to monitor the court-ordered transfer to community homes of retarded residents at the Pennhurst Center in Spring City, Chester County.

U.S. District Judge Raymond J. Broderick ruled Friday that the court would retain the fines to pay for future operations of the Special Master's Office and to pay bills that the office was unable to pay between July and October.

"The commonwealth defendants," Broderick wrote, "although they have failed to comply with the orders of this court, will nevertheless be purged of the contempt in view of the fact that they have paid fines in an amount sufficient to comply with this court's (order)."

Mrs. O'Bannon had argued that the Special Master's Office was unnecessary.

The state appealed Broderick's contempt ruling last fall and the Court of Appeals is expected to rule soon on whether it was a valid order. In its appeal, the state requested that all the contempt money be returned.

A. J. Pura

JAN 29 1982

Byline

'Vicious, Petty' Charges Hurlled

Commissioners Rapped In Legal Group's Suit

Branding the actions of the Lackawanna County commissioners as "vicious and petty" and practicing "the politics of pillage," five members of the Northeastern Pennsylvania Legal Services (NPLS), Inc., are seeking a restraining order in federal court to halt Lackawanna County from terminating an NPLS contract with the county's Area Agency on Aging.

One of the five lawyers representing NPLS and who wished to remain anonymous Thursday accused the commissioners of "tinkering with federal monies for the elderly" as if the sums were "their own private pin money."

The NPLS suit filed in federal court earlier this week accuses the county commissioners of transferring as of Feb. 1 the Elderly Legal services contract to "Attorneys Frank Bolock and Howard Spizer."

The amended complaint states that neither Bolock nor Spizer have ever submitted proposals for the provision of legal services to the elderly, and that neither lawyer sought the contract if it required their full-time services.

Both lawyers have private practices in the Scranton Electric Building besides other offices, Bolock in West Side and Spizer in Tunkhannock, The Tribune learned.

The county's award to Bolock and Spizer is illegal because it was not done according to proper bidding, merit, or with prior ap-

proval of the Pennsylvania Department of Aging, according to the complaint.

The five plaintiffs, Attys. O. Randolph Bragg, Ira Mark Goldberg, Sylvia Hahn, J. Palmer Lockward and Ben Josielewski, seek a

temporary restraining order, (TRO) and a preliminary and permanent injunction from Chief Federal Judge William J. Nealon to halt the county

(Please Turn to Page 5)

NPLS Blasts Commissioners

(Continued From Page 3)

commissioners from terminating NPLS's contract with the Area Agency on Aging. Nealon, on vacation this week, is scheduled to act next week.

The group of legal services lawyers accused their director, Atty. Eugene Smith, of "capitulating" to county administrator Andrew Wallace when Wallace summoned Smith to his office Dec. 28, 1981.

The complaint revealed that Wallace told Smith that NPLS would receive the Juvenile and Dependency Contract at the prior year's funding level but that NPLS would have to relinquish the Elderly Legal Services Contract in return.

"Defendant Wallace then threatened Smith by indicating that if NPLS fought for the Elderly Services contract it would receive neither contract," the complaint states.

Smith, without consulting the plaintiffs, capitulated to Wallace's threat and on Dec. 31 notified Goldberg and Jezerski that their positions, funded by the Elderly Legal Services contract, would terminate Jan. 29, it is further charged.

The suit claims that the county commissioners' actions violates plaintiffs' rights to "equal protection and due process," and the First Amendment's right of free speech.

The five legal services' lawyers also filed last week a complaint with the Pennsylvania Department of Aging, Harrisburg, requesting on an emergency basis to redesignate the Area Agency on Aging and remove it from auspices of the county commissioners.

Post Gazette - Dec 3, 1981

State/Region

Court rule reduces welfare payments

PHILADELPHIA (AP) — The 3rd U.S. Circuit Court of Appeals stayed a lower court injunction yesterday, thus allowing Pennsylvania to immediately begin reducing welfare payments to families with dependent children.

The order was signed by Judge Arlin Adams with the concurrence of Judge Joseph Weis Jr. Judge A. Leon Higginbotham dissented.

The judges are expected to rule, possibly as early as next week, on the legality of the injunction that had temporarily blocked the cuts. The injunction had been issued on grounds that new federal regulations on cuts in the program for Aid to Families with Dependent Children were made too quickly, thus denying the public the right to com-

ment and protest.

Pennsylvania had planned to implement the cuts on Tuesday, but was blocked by the injunction granted Nov. 23 by Chief Judge Joseph Lord 3rd of U.S. District Court.

Jim Wiggins, budget spokesman for Gov. Thornburgh, said he did not know when the first checks with the reduced amounts would be issued, adding that the matter would be reviewed.

The cuts nationally are expected to save the government more than \$2 billion and were approved by Congress under prodding of President Reagan.

The stay followed a one-hour oral argument on the injunction's legality by attorneys representing the U.S. Department of Health and Hu-

man Services, the Pennsylvania Welfare Department and two Philadelphia welfare rights organizations.

"We are concerned about the poor people involved," Adams observed during that argument. "But we are also dealing with a major piece of legislation that affects the whole country."

Adams directed that additional legal briefs on questions raised by the court are due tomorrow.

"National interest in implementing the budget reductions enacted by Congress clearly calls for reversal of the injunction," said Michael Kimmel, a Justice Department lawyer representing HHS Secretary Richard Schweiker, whose staff wrote the contested regulations.

The lawsuit was brought by the Philadelphia Citizens in Action and the Philadelphia Welfare Rights Organization represented by Community Legal Services, a federally funded agency.

The federal cuts became effective Oct. 1. Pennsylvania Welfare Secretary Helen O'Bannon said about 55,000 persons would be dropped from the rolls, with benefits reduced for another 50,000.

Besides stopping Pennsylvania, Lord's injunction also threatened to affect some 667,000 other families across the country who are considered working poor.

John Shellenberger, attorney for the Pennsylvania Welfare Department, said the financial impact on the state is tremendous.

Pittsburgh, PA

POST-GAZETTE: Tues., Jan. 26, 1982—3

Supreme Court reaffirms ban on school prayer

WASHINGTON (AP) — The Supreme Court, reaffirming its ban on organized prayer in public schools, yesterday ruled unconstitutional a Louisiana law permitting voluntary prayer sessions.

The court, without written opinion, upheld a ruling that the state law passed last year violates the constitutionally mandated separation of church and state.

The Louisiana law provided that local school boards could allow each classroom teacher to ask whether any student wished to offer a prayer, and if no student volunteered, could permit the teacher to pray.

The prayer did not have to be specifically religious in nature, and was to take place before classes began.

The law did not force either the student or the teacher to pray, and provided that students who did not wish to take part could, at their parents' written request or their own verbal request, leave the classroom or simply not participate.

Local regulations drawn up by the Jefferson Parish School Board to implement the law also provided that any student wishing to take part in the one-minute prayer session had to have his or her parents' written consent and make a verbal request to be included.

Last August, the 5th U.S. Circuit Court of Appeals struck down the law and the Jefferson Parish guidelines and the Supreme Court yesterday ratified the decision.

In other matters yesterday, the court:

- Rejected an appeal filed by Pittsburgh Neighborhood Legal Services on behalf of five Western Pennsylvania students seeking to avoid prosecution for defaulting on student loans. The students, all of them from counties adjacent to Allegheny County, had argued that the Pennsylvania Higher Education Assistance Agency had prevented them from defending themselves by requiring them to answer the suits in Harrisburg, instead of in a local court.

- Ruled by a 6-3 vote that Indian tribes have a legal right to tax non-Indians for natural resources taken from reservation lands.

Parents sue judges on custody

JAN 6 82

By Lynn Ehrenberger
Post-Gazette Staff Writer

A Northside mother whose 1-year-old daughter was taken from her before Christmas and placed in a foster home went to federal court yesterday charging that she was not given legal representation as mandated by law.

In a class action suit filed by Neighborhood Legal Services in her behalf, Carol Smith, 21, of 901 Chestnut St., asked the U.S. District Court to order that an attorney be appointed to represent her.

Named in the suit are Juvenile Court Judges R. Stanton Wettick, Livingstone M. Johnson and Raymond A. Novak; Thomas Carros, director of Children and Youth Services; Helen O'Bannon, secretary of the state Department of Public Welfare; and the county commissioners.

Smith lives with her husband, David, and another daughter, Brenda, 2. Both she and her husband completed the 10th grade and their only monthly income is \$381 in public assistance, which has been reduced to \$318 since their daughter, Christine, was removed from

their home.

The suit charged that Smith took Christine to Allegheny General Hospital on Dec. 1 for treatment of a runny nose, sneezing, diarrhea and an ear infection.

Hospital officials contacted a caseworker at Children and Youth Services. The suit said Christine had been hospitalized on three previous occasions for failing to gain weight or for losing weight.

The caseworker, Robert Rick, obtained a court order preventing the hospital from releasing Christine to her parents and requested a shelter hearing before Johnson. At the hearing on Dec. 4, Johnson determined that Christine should be placed in shelter care.

As a result, the suit charged, Christine was not returned to her parents but was placed in a foster home, even though Mrs. Smith had been attending a parenting skills program.

According to the suit, neither Mrs. Smith nor her husband were told that they were entitled to have a lawyer represent them or have one appointed by the court if they could not afford one. That was

in violation of Smith's civil rights and in violation of the state Juvenile Act, the suit charged.

James D. Belliveau, a lawyer with Neighborhood Legal Services, said the Smiths believed Christine was in an institution under the custody of the county and did not know until this week that she was in a foster home. He said their other daughter, Brenda, is in good health and that "disputed medical evidence" had been presented at the hearing.

He said state law requires that the court tell people that they are entitled to legal counsel and provide an attorney if necessary. This has not been done, he said.

NLS has been representing poor people in cases involving dependent children, he said, but funding cuts have resulted in a reduction in NLS staff and it no longer has the manpower to represent them.

A hearing is scheduled today at 11 a.m. in U.S. District Court before Judge Barron P. McCune, asking him to order that an attorney be appointed to represent Smith at a dependency hearing set for Jan. 6 in Juvenile Court.

8-27-81 *Pittsburgh Post-Gazette*

Band marches one more time

Its drums have been taken away, but that won't stop the Edgewood High School band from playing one more time.

About 30 musicians, replete in maroon sweaters and white pants, will wind their way through the borough's tree-lined streets Saturday no matter how much Neighborhood Legal Services Association objects.

But it could be the band's last performance; Edgewood High School is no more.

Legal Services made plenty of noise this week when it caught wind of the band's plan to march in the Edgewood Community Day parade this weekend.

The association apparently interpreted what it heard about the parade and other community day activities as being a protest of the New District school desegregation merger.

Rumors had been floating that the festivities at Koenig Field would include a dunking booth where a person dressed like U.S. District Judge Gerald Weber would be the target.

Last April, Weber ordered Edgewood to join the Churchill, Swissvale and Turtle Creek districts in a merger designed to desegregate the mostly black General Braddock School District.

Although the "dunk Weber" idea was quickly scrapped, booths at the celebration will raise funds for the anti-merger Committee to Defend Edgewood Schools.

Legal Services lawyer Thomas Henderson told New District officials that the band's appearance in the parade might be construed as the kind of anti-merger activity that was banned this month by Weber.

Weber decreed that all New District employees and officials could be held in contempt for trying to impede the consolidation.

Henderson pointed out to New District Solicitor Thomas Rutter that a New District teacher, Justin D'Ambrosio, would be directing the Edgewood band.

The NLSA lawyer also figured that the band would be using school uniforms and school instruments, thereby lending New District support to a protest.

Organizers of the festivities were stunned when the word was relayed to them by former Edgewood Superintendent John Dunlap, now a New District assistant superintendent.

"If they wanted a protest march, I'd have given them a protest march," Joseph Stabile, parade marshal, said. "But the borough asked me for a community day parade and that's what I'm going to give them."

Mary Limpert, celebration co-chairwoman, said the event is an annual affair designed to bring people of the tiny community closer together.

Although the strong anti-merger feelings in the community have given this year's celebration more zest, it can in no way be interpreted as an anti-merger rally, she said.

Other celebration events include games, awards, a performance by Ralph DeStefano and his Dixieland Band and fireworks at about 9:30 p.m.

When the New District investigated the band's performance, it found that its only recourse was to advise D'Ambrosio against participating and to take away the band's drums.

Limpert said a Penn Hills man quickly volunteered to lend the band some drums for the performance.

Despite the victory, the music on Saturday will be bittersweet for the band and the community.

Unless a court appeal can overturn the merger, it's taps for the Edgewood High School band. □

By Chet Wade

NEW DISTRICT

Objection To School Election Plan Rejected

By JAMES HUTTENHOWER
Of The Daily Tribune

U.S. District Judge Gerald Weber Wednesday rejected a motion to increase the number of New District school board seats up for election this November.

Neighborhood Legal Services attorneys, representing black parents in the former General Braddock School District, had argued that those residing in that district would be under-represented in the voting region plan approved two weeks ago by the New District school board and Weber. Three board seats are up for election this year under that plan.

The NLS motion requested the election of at least six members to the board this year, if not all nine members. The motion also suggested that three of the six members elected in 1981 have a four-year term and three have a two-year term.

Weber's order states that adequate representation for each former school district has been assured with the three seats now up for election. "No former school district is entitled to any special representation on the board of the New District. Only the people in the nine new electoral regions are so entitled."

There is "nothing fundamentally unfair" in having parts of the former General Braddock district, joined to adjacent areas of other municipalities under the new voting plan, be represented by current New District board members living in those areas, the order continues.

Under the voting plan, today is the deadline for candidates in voting regions 2, 5, and 7 to get on the ballot for the November general election.

Democrat and Republican candidates for the seats were selected by local party committees within the last week. So far, no independent candidates have filed in any of the districts, Allegheny County director of elections Kenneth Dixon said Wednesday afternoon.

The Democrat and Republican candidates is each region are as follows:

✓ In Region 2 (all of Rankin and Swissvale voting districts 1, 2, 3, 6, 13 and 14), Republican William K. McFarland, of 1927 Wayne St., Swissvale, faces Democrat Carl R. Linn, of 422 Duquesne St.,

Rankin.

McFarland won a Republican nomination in the pre-merger primary election this spring in Swissvale Area School District, while Linn was unsuccessful in this year's Democratic primary in the former General Braddock area.

✓ In Region 5 (all of Forest Hills except voting district 4), Democrat Elaine Drisko, of 403 Woodside Rd., faces Republican Lester Longan, of 120 Watt Lane. Both candidates were members of the former Churchill Area school board and serve on the New District advisory committee. Longan is also a former president of the Churchill board.

✓ In Region 7 (all of Turtle Creek and East Pittsburgh ward 3), Democrat Donald Wukich, current New District school board member, of 308 Albert St., Turtle Creek, faces Republican Regis Durmis, of 147B Watson Dr., Turtle Creek. Wukich, whose term on the New District board expires this year, is former president of the Turtle Creek Area school board.

The decision by Region 2 Democrats to select Linn, a resident of the former General Braddock school area, has produced mixed reactions in Swissvale, the other municipality making up the voting region and part of the former Swissvale Area school district.

The Region 2 areas of Swissvale contain roughly 2,600 registered voters — approximately 1,100 more than in Rankin, and some Swissvale residents had expected to lock up another seat on the New District board in the election. Board president James Kelly is also from Swissvale.

Diann Jenkins, president of the anti-merger Swissvale Committee for Quality Education, accused Swissvale Democratic chairman Jack Bell of selling the community "down the tubes" and of "totally ignoring his responsibility to the voters in Swissvale Area."

Jenkins claimed that Bell decided on his own to align Swissvale and Rankin Democrats, instead of meeting with Swissvale Republicans to choose a common candidate for the community — something Bell indicated last week he might try.

Bell could not be reached for comment last night.

City/Area

Woodland ordered to release student data

By Fritz Huysman
Post-Gazette Staff Writer

A federal judge has ordered Woodland Hills School District to release certain student statistics to help determine if the district is abiding by a court desegregation order.

The Neighborhood Legal Services Association requested the information so its educational consultant, HGH Associates, can review the school district's pending elementary desegregation plan.

NLSA attorney Thomas Henderson said the statistics also are needed so the association can devise its

own elementary desegregation plan. The information includes how many students of each race are in each classroom, where they live, transportation maps and district employment rolls.

U.S. District Chief Judge Gerald J. Weber signed the protective order Monday to clarify what student information must be released.

The NLSA presented the district last month with an eight-page request for statistics and detailed information about operation of the Woodland Hills district.

Thomas J. Rutter Jr., Woodland Hills' solicitor, said yesterday that

some of the requested information will take time to compile and probably will not be released until next month.

Although some parents are angry about the order, Rutter said the requested data either are public already or can be released under court order if relevant to a lawsuit.

"Nothing has been turned over, or will be turned over, that is objectionable," he said.

Various anti-merger groups in the district have opposed the NLSA's request, arguing that federal law requires written parental consent before a student's home address, race and grade level can be re-

leased. The order does not require the release of student discipline information, which the district maintains is beyond the scope of the desegregation issue before Weber.

Henderson requested discipline information because he heard that a disproportionate number of black students have been suspended or otherwise punished. Rutter said there is no truth in the report.

Weber created Woodland Hills last spring by merging five east suburban school districts. The merger resulted from a 10-year lawsuit that the NLSA filed on behalf of three parents in the former General Braddock School District.

APPENDIX A

<u>NATIONAL SUPPORT CENTER</u>	<u>FISCAL YEAR 1980 FUNDING</u>
Center for Law and Education Cambridge, Massachusetts.	\$ 601,472
Center on Social Welfare Policy and Law New York, N.Y..	691,258
Migrant Legal Action Washington, D.C..	565,827
National Center for Immigrants' Rights Los Angeles, Calif.	130,000
National Center on Women and Family Law New York, N.Y..	167,500
National Center for Youth Law San Francisco, Calif.	625,158
National Clients Council Washington, D.C..	550,000
National Consumer Law Center Boston, Mass.	675,632
National Economic Development Law Project Berkeley, Calif.	423,669
National Employment Law Project New York, N.Y..	520,760
National Health Law Program Santa Monica, Calif..	630,061
National Housing Law Project Berkeley, Calif.	740,234
National Legal Aid and Defender Association Washington, D.C..	53,000
National Senior Citizens Law Center Los Angeles, Calif.	609,079
National Social Science & Law Center Washington, D.C..	317,090
Native American Rights Fund/Indian Law Support Center Boulder, Colo..	238,337

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

DIANN JENKINS, JERRY
MALLEY, BONNIE ROTONTO,
and NANCY TIRPAK,

Plaintiffs,

vs.

NEIGHBORHOOD LEGAL SERVICES
ASSOCIATION, a non-profit
corporation,

Defendant.

CIVIL

DIVISION

No.

Issue No. 081-22570

Complaint

In Equity

No Real Estate Involved

Code

Filed on behalf of DIANN JENKINS,
JERRY MALLEY, BONNIE ROTONTO,
and NANCY TIRPAK, Plaintiffs

Counsel of Record for this
Party:

Ira Weiss, Esquire
Pa. I.D. #17408

Goldman & Weiss
Firm #373
Suite 530 Grant Building
Pittsburgh, PA 15219

(412) 562-0112

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CIVIL DIVISION

DIANN JENKINS, JERRY)	
MALLEY, BONNIE ROTONTO,)	
and NANCY TIRPAK,)	
)	
Plaintiffs,)	
)	No.
vs.)	
)	In Equity
NEIGHBORHOOD LEGAL)	
SERVICES ASSOCIATION,)	No Real Estate Involved
a non-profit corporation,)	
)	
Defendant.)	

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE OR KNOW A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

LAWYER REFERRAL SERVICE-

The Allegheny County Bar Association
 920 City-County Building
 Pittsburgh, Pennsylvania 15219
 Telephone: 412-261-0518

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

DIANN JENKINS, JERRY)	
MALLEY, BONNIE ROTONTO)	
and NANCY TIRPAK,)	
)	
Plaintiffs,)	
)	
vs.)	No.
)	
NEIGHBORHOOD LEGAL)	In Equity
SERVICES ASSOCIATION,)	
a non-profit corporation,)	No Real Estate Involved
)	
Defendant.)	

COMPLAINT

AND NOW, come the Plaintiffs, above named, and by their Attorneys, IRA WEISS, ESQUIRE and GOLDMAN & WEISS, file the following Complaint in Equity against the Defendant, above named:

1. Plaintiff, DIANN JENKINS, is an adult individual residing at 1622 South Braddock Avenue, Swissvale, Allegheny County, Pennsylvania 15218.
2. Plaintiff, JERRY MALLEY, is an adult individual residing at 2114 Lloyd Avenue, Swissvale, Allegheny County, Pennsylvania 15218.
3. Plaintiff, BONNIE ROTONTO, is an adult individual residing at 104 A Harper Drive, Turtle Creek, Allegheny County, Pennsylvania 15245.

4. Plaintiff, NANCY TIRPAK, is an adult individual residing at 143 D Watson Drive, Turtle Creek, Allegheny County, Pennsylvania 15145.

5. The Defendant, NEIGHBORHOOD LEGAL SERVICES ASSOCIATION, is a Pennsylvania Non-Profit Corporation having its registered office at 535 Fifth Avenue, Pittsburgh, Allegheny County, Pennsylvania 15219.

6. All Plaintiffs are taxpayers of the Commonwealth of Pennsylvania and the United States of America.

7. The Defendant was granted a charter by Order of the Court of Common Pleas of Allegheny County, Pennsylvania, dated March 23, 1966 at 3579 April Term 1966.

8. The purposes of incorporation as stated in Article 3 of the Articles of Incorporation were "to make available legal services to all residents of the City of Pittsburgh and the County of Allegheny, Commonwealth of Pennsylvania, who because of their financial inability are unable to procure such legal aid and to undertake educational programs in which indigent residents may be instructed in and advised of their fundamental private legal rights and obligations, to the end that their performance, motivation and productivity as citizens may be improved and their respect for the law increased..."

9. The Defendant is funded wholly by public funds from the United States of America and the Commonwealth of Pennsylvania under the Legal Services Corporation Act of 1974, Pub. L. 93-335, 88 Stat. 378, 42 U.S.C. 2996, et seq.

and the regulations promulgated to implement said Act, 45 C.F.R. 1600.1, et seq.

10. The Defendant is under legal obligation to expend said public monies in a manner consistent with its charter, applicable statutes and the Code of Professional Responsibility.

11. The Defendant has failed to expend said monies in the aforesaid manner in the following particulars:

A. It has represented the Plaintiffs, Ann Scott and Maryann Razzaq in litigation against the Port Authority of Allegheny County in the Court of Common Pleas of Allegheny County at GD 80-24371 in which the Defendant has expended in excess of \$6,000.00 in expert witness fees for which its clients have assumed no ultimate liability. This use of public monies is in direct violation of Disciplinary Rule 5-103 (B) adopted by the Supreme Court of Pennsylvania February 27, 1974.

B. It has represented the Plaintiffs, Dorothy Hoots, et al, in litigation against the Commonwealth of Pennsylvania and others in an action to compel the reorganization of School Districts in Eastern Allegheny County in the United States District Court for the Western District of Pennsylvania at Civil Action No. 71-538 in which the Defendant has expended large sums of money in expert witness fees and other costs of litigation for which its clients have assumed no ultimate liability. This use of public monies is in direct violation of Disciplinary Rule 5-103 (B) as aforesaid.

12. The said abuse of public monies constitute illegal acts as said abuse offends public policy and is in direct violation of the Rules of the Supreme Court, as aforesaid.

13. The Board of Directors of the Defendant recently adopted a policy whereby the staff attorneys employed by the Defendant would no longer represent persons eligible for their services in cases involving divorce, support, custody, visitation or termination of parental rights.

14. Said action of the Board of Directors is in direct contravention of the stated purpose of the Defendant, Corporation, to wit, making legal services available to those persons where financial circumstances make it impossible for them to secure legal representation.

15. The aforesaid expenditure of public funds in contravention of the laws of Pennsylvania and the Rules of the Supreme Court injures the Plaintiffs and all others as taxpayers, in that it constitutes a waste of public funds.

16. The refusal of the Defendant to undertake the representation of the aforescribed persons constitutes a direct violation of the Charter of said corporation and constitutes an ultra vires act.

17. The Plaintiffs have no adequate remedy at law under the Corporation - Not - for - Profit Code, 15 Pa. C.S.A. 7101, et seq. or at law.

WHEREFORE, Plaintiffs pray this Honorable Court grant the following relief:

a. Permanently enjoin the Defendant from advancing litigation costs without client's responsibility in violation of Disciplinary Rule 5-103 (B).

b. Permanently enjoin the Defendant from refusing to represent eligible clients in matters involving divorce, support, custody, visitation and termination of parental rights in violation of its charter and the conditions surrounding its receipt of public monies.

c. Appoint a receiver to manage the affairs of Defendant, Corporation, so as to ensure compliance with Rules of the Supreme Court and to prevent waste of public monies.

d. Such other relief as the Court may deem appropriate.

GOLDMAN & WEISS

Ira Weiss, Esquire
Attorney for Plaintiffs

APPENDIX 4

LEWIS, RICE, TUCKER, ALLEN AND CHUBB
ATTORNEYS AT LAW
SUITE 1400 RAILWAY EXCHANGE BUILDING
611 OLIVE STREET
ST. LOUIS, MISSOURI 63101
314/231-5633

F WM McALPIN

May 19, 1983

CABLE LRTAC-TELEX 43-4359
TELECOPIER 314/241 6056

Hon. Orrin G. Hatch
United States Senate
Committee on Labor
and Human Resources
Washington, D.C. 20510

Dear Senator Hatch:

Re: Legal Services Corporation

I wish to thank you once again for providing me the opportunity to testify during the hearing on the reauthorization of the Legal Services Corporation. As you know, many questions and issues were raised during the hearing about which I was requested to seek further information or clarification. This letter is my response to that request.

You asked that I provide you with additional information regarding states' utilization of funds under Title XX of the Social Security Act to support the provision of legal services to poor people. In my written statement, I said that only a handful of states had ever used Title XX funds for legal services and the number was declining. The information I was relying upon comes from the Legal Services Corporation. In 1982, fourteen states spent a total of \$12,102,939 in Title XX funds to support the work of 62 programs. In 1983, the programs anticipate receiving \$12,707,700 in Title XX funds, but the number of states drops to 12 and the number of programs to 58. More importantly, about 60% of the total dollars are being received in one state--Pennsylvania. Given these figures, I believe the point I was trying to make in my written statement--that generally most states will not utilize undesignated block grant funds to support legal services for poor people--is a legitimate one.

A second issue that arose during my testimony involved the filing of controversial litigation by local programs during my tenure as Board Chairman. You specifically raised concerns about actions brought by programs in Connecticut and Iowa litigating issues related to the rights of transsexuals. In my

testimony I explained the case in Hartford, Connecticut, which I had personally investigated. I understand that John Barrett, the Director of the Legal Services Corporation of Iowa (LSCI), has written to you explaining his program's participation in Pinneke v. Preisser, 623 F.2d 546 (8th Cir. 1980). That case was filed in 1976 by a county-funded legal aid program in Iowa, not the program funded by the Legal Services Corporation. In 1978, the county-funded program merged with LSCI, and LSCI as part of the merger agreement became attorneys of record in all of the cases pending in the county-funded program. The United States District Court decided the case favorably for the plaintiff and the state's appeal was unsuccessful. For your information, I am attaching a copy of the opinion of the Eighth Circuit Court of Appeals in that case. The facts are that an eligible client was represented in a case initially filed by a non-federally funded program but a case not prohibited by the Legal Services Corporation Act or Regulations so there was no impropriety in its being assumed as part of the merger.

Howard Phillips, in his testimony in opposition to legal services programs filing class action suits, cited as an example of program abuse of the class action device a case initiated by Greater Orlando Area Legal Services (GOALS). Mr. Phillips said that the program filed two class actions which required more staff attorney time than the 4,000 other cases the program handled. These are allegations which were made against this program in a letter from Garry L. Curran of the American Life Lobby to the editor of the New York Times dated December 7, 1982. The allegations are baseless, as indicated in the attached letter from the Director of GOALS to the New York Times responding to these charges. The letter not only cites facts and figures which refute Mr. Curran's assertions, but also contains a description of a not untypical response of the private bar to a request to play a role in the provision of legal services to poor people, specifically in the handling of class actions. For the record, I am also enclosing additional information about one of the lawsuits. The program was successful in both suits, and these victories have directly benefited thousands of poor people in the state of Florida. Yaris v. Special School District of St. Louis County, et al., 558 F.Supp. 545 (E.D.Mo., March 2, 1983) is an example of a somewhat similar case which was undertaken by members of the private bar.

In your opening statement, you referred to a "gag order" obtained by Camden Regional Legal Services to prevent a witness

from testifying before a Congressional committee. I have also looked into that situation and am enclosing materials and documents for the record which will present the program's explanation of this matter. In essence, a U.S. Magistrate prohibited an attorney, who was seeking an injunction against an LSC grantee for alleged violation of the Act, from testifying before a House of Representatives Committee concerning the matters in litigation. In fact, the attorney's attempted conduct would appear to violate the Disciplinary Rule DR 7-107 (F) or (G) of the ABA Code of Professional Responsibility. In the chronology of events which is enclosed you will note that on March 24, 1981, Judge Brotman wrote as a part of his denial of the attorney's appeal:

"I do not consider Judge Hammill's determination a gag order. As to any other matter, not the subject matter or issue or issues in the instant litigation, counsel is certainly free to participate."

Indeed, testimony was given the very next day before Congressman Kastenmeier's Subcommittee; and the party who alleged that a "gag order" had been entered did testify. This is another example of an incident that has been cited time and again which, I believe, has no basis in fact.

You also raised concerns about the purchase of real estate by LSC-funded programs. You specifically cited the example of Birmingham Area Legal Services purchasing a \$500,000 building. During my tenure as Board Chairman, I can remember several occasions where either Congressional committees or the Government Accounting Office requested the Corporation to look into the issue of real estate purchases by programs. The Corporation has developed very thorough procedures and approval processes that local programs must comply with prior to purchasing real estate. I am attaching a copy of a memo sent to the Regional Directors of LSC in 1979 which states the Corporation policy and the procedural steps required of programs. It is my belief that the policy and procedures are sound and adequately protect the resources of local programs.

The example you cited in Birmingham occurred in 1982, which was after my tenure on the Board of the Corporation. However, upon inquiry, I have learned that the Birmingham program failed to follow the proper procedures in purchasing a building and did not receive the required Corporation approval for the purchase. As a result, the entire amount expended became a questioned

cost in the program's 1982 financial audit. Where the matter currently stands, I do not know; however, I do believe the Corporation has acted appropriately in this area in the past applying its policies and procedures strictly.

You asked for information on how many buildings have been purchased by legal services programs and what amount of funds have been spent on these purchases. I have no way of collecting and providing that information, but I am certain that the Corporation staff will provide it to the Committee. I will say, however, that I believe the purchase of real estate to be a legitimate use of LSC funds as long as the purchase can be justified from a cost-benefit perspective and is in the long-term interest of the client community. The policies and procedures adopted by LSC appear to be adequate to accomplish these objectives.

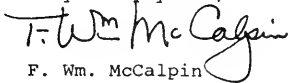
During the hearing a question was also raised about a booklet entitled "Lobbying on a Shoestring" published by the Massachusetts Poverty Center. The booklet was published in 1982 after I left the Board. I am advised, however, that that organization is not a recipient of Corporation funds and that the publication was not financed by the Corporation.

Finally, you raised a question concerning the apparent failure of legal services program attorneys to keep time records, pointing to the almost universal practice in private law offices. My hasty research indicates that salaried lawyers, particularly those in public employment, are much less apt to maintain time records. This would seem to be true in many prosecutor and public defender offices, city and county counselor's offices and some state attorneys general offices. Apparently, even U.S. Attorney's offices only keep track of time for certain specified activities and then not by reference to the particular case. I am told that most corporate legal departments also do not keep time records in the law office sense. Thus, the practice of legal aid lawyers is not as aberrant as might first appear.

I hope that the foregoing--as well as my answers to Senator Denton's inquiries, which are being sent simultaneously--will assist you and your Committee in framing

constructive legislation for the future conduct of the Legal Services Corporation. If I may be of further assistance, please do not hesitate to call upon me.

Very truly yours,

A handwritten signature in dark ink, appearing to read "F. Wm. McCalpin". The signature is fluid and cursive, with the first name "F." and last name "McCalpin" clearly legible.

F. Wm. McCalpin

FWM:np

Enc.

P.S. Since dictating the foregoing there has come to my attention and I enclose herewith a clipping from the New York Times of May 4, 1983. It describes yet another instance of the absolute necessity of permitting legal services programs to bring class actions against governmental entities.

FWM

Verna PINNEKE, Appellee,

v.

**Victor PREISSER, Commissioner of Iowa
Department of Social Services, and Mo-
nica Murray, Director of the Cerro Gor-
do County Department of Social Ser-
vices, Individually and in their Official
Capacities, Appellants.**

No. 79-1551.

**United States Court of Appeals,
Eighth Circuit.**

Submitted Feb. 12, 1980.

Decided June 27, 1980.

Suit was brought by medicaid claimant, who had undergone sex reassignment surgery, seeking remedial injunction and declaratory relief from the denial of her constitutional rights to equal protection and due process and her statutory right to medicaid benefits after local and state medicaid officials refused funding for the surgery. The United States District Court for the Northern District of Iowa, Donald E. O'Brien, J., required state and local officials to reimburse claimant and awarded \$500 as compensation for mental anguish and suffering, and state and local officials appealed. The Court of Appeals, Floyd R. Gibson, Senior Circuit Judge, held that: (1) Iowa's policy of denying medicaid benefits for sex reassignment surgery, the only medical treatment available to relieve or solve the problems of a true transsexual, constituted an arbitrary denial of benefits based solely on diagnosis, type of illness or condition, and (2) Iowa's policy of denying medicaid benefits for sex reassignment surgery when it was a medical necessity for treatment of transsexualism was not consistent with the objectives of the medicaid statute.

Affirmed.

1. Federal Courts ⇐192

In suit by medicaid claimant against state and local officials seeking to recover expenses incurred for sex reassignment sur-

gery, district court had jurisdiction of claims regarding equal protection and due process and it was irrelevant that district court did not reach merit of those claims. 28 U.S.C.A. § 1343; Social Security Act, § 1901, 42 U.S.C.A. § 1396; U.S.C.A.Const. Amends. 5, 14.

2. Social Security and Public Welfare ⇐241.95

A state medicaid plan absolutely excluding the only available treatment known at this stage of the art for a particular condition must be considered an arbitrary denial of benefits based solely on diagnosis, type of illness or condition, and thus Iowa could not deny medicaid benefits for sex reassignment surgery, the only medical treatment available to relieve or solve the problems of a true transsexual, for treatment of transsexualism under the medicaid program. Social Security Act, §§ 1902(13)(B), 1905(a), 42 U.S.C.A. §§ 1396a(13)(B), 1396d(a).

3. Social Security and Public Welfare ⇐241.95

Iowa's policy of denying medicaid benefits for sex reassignment surgery, the only known medical treatment to relieve or solve the problems of a true transsexual, when such surgery is a medical necessity for treatment of transsexualism was not consistent with the objectives of the medicaid statute and reflected inadequate solicitude for the claimant's diagnosed condition, the treatment prescribed by the claimant's physicians, and the accumulated knowledge of the medical community. Social Security Act, § 1901, 42 U.S.C.A. § 1396.

4. Social Security and Public Welfare ⇐241.95

Decision whether certain treatment or particular type of surgery is "medically necessary" so that medicaid coverage is required rests with individual claimant's physician and not with clerical personnel or government officials, and thus claimant, who proved real need for only medical service available to alleviate her condition, and whose condition improved since surgery, was entitled to recover reimbursement for

PINNEKE v. PREISSER

Cite as 623 F.2d 546 (1980)

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expenses incurred for sex reassignment surgery after funding was denied based on Iowa's medicaid plan, which specifically excluded coverage for such surgery. Social Security Act, § 1901, 42 U.S.C.A. § 1396.

5. Social Security and Public Welfare ↔241.95

Medicaid exclusions for mental diseases are strictly limited to situations involving payment for services in institution for tuberculosis or mental disease and do not apply to mental health problems in general, and thus claimant's transsexual surgery came within medical assistance categories of inpatient hospital services and physicians' services furnished by a physician, and had to be covered under state's medicaid plan unless not medically necessary. Social Security Act, § 1905(a), 42 U.S.C.A. § 1396d(a).

Stephen C. Robinson, Sp. Asst. Atty. Gen., Dept. of Justice, Des Moines, Iowa (argued), Thomas J. Miller, Atty. Gen., Des Moines, Iowa, on brief, for appellant.

Dennis L. Groenenboom, Legal Services Corporation of Iowa, Mason City, Iowa, for appellee.

Before HEANEY, Circuit Judge, GIBSON, Senior Circuit Judge, and STEPHENSON, Circuit Judge.

FLOYD R. GIBSON, Senior Circuit Judge.

Appellants are state and local officials in charge of administering the State of Iowa's Medicaid program. They appeal from the District Court's¹ order requiring them to reimburse Appellee-Plaintiff Pinneke \$3,024.52 for her expenses incurred for sex reassignment surgery and awarding her \$500 as compensation for mental anguish and suffering resulting from the wrongful denial of benefits, together with attorney fees. Appellate jurisdiction rests upon 28 U.S.C. § 1291 (1976). We affirm.

Pinneke began life as a male, but quickly became uncomfortable with the male gender identity. After extensive testing, doctors concluded that she had a transsexual personality, and required sex reassignment surgery. She underwent sex reassignment surgery on April 20, 1976. As a Supplemental Security Income recipient, Pinneke was eligible for benefits under the Medicaid program, 42 U.S.C. § 1396 (1976). She applied for funding of her sex reassignment surgery under the Medicaid program, but the Cerro Gordo County office of the Iowa Department of Social Services refused funding. The Commissioner of the Iowa Department of Social Services affirmed this decision on the basis that the State of Iowa's Medicaid plan specifically excludes coverage for sex reassignment surgery. Pinneke then filed this suit seeking remedial injunctive and declaratory relief from the denial of her constitutional rights to equal protection and due process and her statutory right to Medicaid benefits.

On May 11, 1979, the District Court declared that the policy of denying Medicaid benefits for sex reassignment surgery where it is a medical necessity for treatment of transsexualism is contrary to the provisions of Title XIX of the Social Security Act, 42 U.S.C. § 1396 (1976), and therefore violates the supremacy clause of the United States Constitution. It declared the relevant parts of the Iowa State Plan void, and permanently enjoined the administration and enforcement of the Iowa Medicaid program in a manner to deny benefits for medically necessary care and treatment incident to sex reassignment surgery or subsequent corrective surgery.

Preliminarily, appellants argue that the Supreme Court's decision in *Chapman v. Houston Welfare Rights Organization*, 441 U.S. 600, 99 S.Ct. 1905, 60 L.Ed.2d 508 (1979), requires dismissal of the complaint for lack of federal jurisdiction. *Chapman* held that supremacy clause claims challenging the validity of state welfare regulations

1. The Honorable Donald E. O'Brien, United States District Judge, Northern District of Iowa.

because of conflict with the Social Security Act do not fall within the ambit of the jurisdictional grant of 28 U.S.C. § 1343 (1976).

In *Hagans v. Lavine*, 415 U.S. 528, 536, 94 S.Ct. 1372, 1378, 39 L.Ed.2d 577 (1974), the Supreme Court held that a federal court may hear a pendent claim based on the Social Security Act when a substantial constitutional claim is also presented. In his concurring opinion in *Chapman*, Mr. Justice White observed that the *Chapman* majority did not question the continuing validity of *Hagans*, 441 U.S. at 661 n.33, 99 S.Ct. at 1915 (White, J., concurring in the judgment). The dissenters in *Chapman* noted that "even a welfare recipient with a federal statutory claim may sue in a federal court if his lawyer can link this claim to a substantial constitutional contention. And under the standard of substantiality established by *Hagans v. Lavine*, *supra*, such a constitutional claim would not be hard to construct." *Id.* at 675, 99 S.Ct. at 1946. (Stewart, J., dissenting). See also *Herweg v. Ray*, 619 F.2d 1265, at 1269 (8th Cir. 1980); *Oldham v. Ehrlich*, 617 F.2d 163, at 166-168 (8th Cir. 1980).

[1] The District Court found that by virtue of 28 U.S.C. §§ 1331 and 1343(3) and (4) it had jurisdiction over Pinneke's complaint raising issues arising under the equal protection, due process, and supremacy clauses of the Constitution. This determination, filed a few days before the *Chapman* decision, is incorrect in holding that the supremacy clause allegation could provide jurisdiction under 28 U.S.C. § 1343 (1976), but the *Chapman* decision does not detract from the District Court's finding that section 1343 encompasses jurisdiction of the claims regarding equal protection and due process. It is irrelevant that the District Court did not reach the merit of these claims. *Hagans v. Lavine*, 415 U.S.

528, 543, 94 S.Ct. 1372, 1382, 39 L.Ed.2d 577 (1974). Appellants' jurisdictional challenge is rejected.

On the merits of the claim, appellants assert that Congress conferred upon the states considerable latitude and discretion in shaping their medical assistance programs under Title XIX, and that the State of Iowa has properly exercised this discretion to formulate an irrebuttable presumption that treatment of transsexualism by alteration of healthy tissue cannot be considered "medically necessary."² Appellants apparently concede that Pinneke suffers from transsexualism, but contend that the state may make an irrebuttable presumption prohibiting a certain manner of treatment, even though medical testimony establishes that this treatment, sex reassignment surgery, is the only procedure available for treatment of the condition from which Pinneke suffers, transsexualism, and was medically necessary for her, based upon an individualized medical evaluation.

From this record, it appears that radical sex conversion surgery is the only medical treatment available to relieve or solve the problems of a true transsexual. As noted by the Minnesota Supreme Court in *Doe v. Minnesota Department of Public Welfare and Hennepin County Welfare Board*, 257 N.W.2d 816, 819 (Minn.1977):

Given the fact that the roots of transsexualism are generally implanted early in life, the consensus of medical literature is that psychoanalysis is not a successful mode of treatment for the adult transsexual. * * * The only medical procedure known to be successful in treating the problem of transsexualism is the radical sex conversion surgical procedure requested by Doe in the present case:

"It is the alternative that is sobering.

In the light of present knowledge, there is no known approach to treat-

2. The State of Iowa does not appear to challenge the use of "medically necessary" as the standard for determining when it must provide coverage, but rather argues that sex reassignment surgery simply is considered not "medically necessary," but more in the nature of cosmetic surgery. This standard of medical

necessity is not explicit in the statute, but has become judicially accepted as implicit to the legislative scheme and is apparently endorsed by the Supreme Court. *Beal v. Doe*, 432 U.S. 438, 444-45 & n. 9, 97 S.Ct. 2366, 2370-71, 53 L.Ed.2d 464 (1977).

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ment of transsexualism other than the surgical route. Nothing else holds promise. Granted that the surgical route is difficult and clearly second-best to a method of preventing these tragic reversals of gender identity and role, yet it seems to be all that there is to offer at present." Hastings, *Post-surgical Adjustment of Male Transsexual Patients*, 1 Clinics in Plastic Surgery 335, 344.

* * * * *

Thus, it is not unreasonable to conclude that transsexualism is a very complex medical and psychological problem which is generally developed by individuals early in life. By the time an individual reaches adulthood, the problem of gender role disorientation and the transsexual condition resulting therefrom are so severe that the only successful treatment known to medical science is sex conversion surgery.

The State of Iowa, in choosing to participate in Title XIX, the Medicaid program, by establishing a Medical Assistance Program, has bound itself to abide by certain provisions of the federal legislation. Title XIX, 42 U.S.C. § 1396a(13)(B), mandates that five basic categories of medical assistance be provided to all categorically needy persons when the assistance is medically necessary. These five categories, listed in section 1396d(a) include "inpatient hospital services (other than services in an institution for tuberculosis or mental diseases)" and "physicians' services furnished by a physician (as defined in section 1395x(r)(1) of this title), whether furnished in the office, the patient's home, a hospital, or a skilled nursing facility, or elsewhere."

The state's plan is subject further to regulations promulgated by the federal Department of Health, Education, and Welfare. In particular, 42 C.F.R. 449.10(a)(5)(i) (1977), now codified at 42 C.F.R. § 440.230(c) (1979), provides in pertinent part:

3. Senate Report No. 404, 89th Congress, 1st session, U.S. Code Cong. & Admin. News 1965, p. 1986, states in part:

3(a) Conditions and limitations on payment for services.

[T]he State may not arbitrarily deny or reduce the amount, duration or scope of, such services to an otherwise eligible individual solely because of the diagnosis, type of illness, or condition. Appropriate limits may be placed on services based on such criteria as medical necessity or those contained in utilization or medical review procedures.

[2] We find that a state plan absolutely excluding the only available treatment known at this stage of the art for a particular condition must be considered an arbitrary denial of benefits based solely on the "diagnosis, type of illness, or condition." *Doe v. Minnesota Department of Public Welfare*, 257 N.W.2d 816, 820 (Minn.1977); see *White v. Beal*, 555 F.2d 1146, 1151-52 (3d Cir. 1977). Cf. *G. B. v. Lackner*, 80 C.A.3d 64, 145 Cal.Rptr. 555 (1978) (classification of sex reassignment surgery as cosmetic is arbitrary).

[3] Furthermore, Iowa's policy is not consistent with the objectives of the Medicaid statute. Without any formal rulemaking proceedings or hearings, the Iowa Department of Social Services established an irrebuttable presumption that the procedure of sex reassignment surgery can never be medically necessary when the surgery is a treatment for transsexualism and removes healthy, undamaged organs and tissue. This approach reflects inadequate solicitude for the applicant's diagnosed condition, the treatment prescribed by the applicant's physicians, and the accumulated knowledge of the medical community. The Supreme Court has emphasized the importance of a professional medical judgment in this context. See *Beal v. Doe*, 432 U.S. 438, 445 n. 9, 97 S.Ct. 2366, 2371, 53 L.Ed.2d 464 (1977). The legislative history also supports the conclusion that Congress intended medical judgments to play a primary role in the determination of medical necessity.³ S.Rep.

(1) Physicians' role

The committee's bill provides that the physician is to be the key figure in determining utilization of health services—and provides that it is a physician who is to decide upon

No. 404, 89th Cong., 1st Sess., *reprinted in* [1965] U.S.Code Cong. & Admin.News, pp. 1943, 1986-89. See also *Dodson v. Parham*, 427 F.Supp. 97, 108-09 (N.D.Ga.1977); *Rush v. Parham*, 440 F.Supp. 383, 389-91 (N.D.Ga.1977); *White v. Beal*, 555 F.2d 1146, 1150-51 (3d Cir. 1977); Comment, *Public Welfare: Medicaid Funding for Transsexual Surgery*, 63 Minn.L.Rev. 1037-48 & n.55, 1051-52 & nn.75 and 76 (1979).

[4] The decision of whether or not certain treatment or a particular type of surgery is "medically necessary" rests with the individual recipient's physician and not with clerical personnel or government officials. And, as stated in *White v. Beal*, *supra*, 555 F.2d at 1152, "The regulations permit discrimination in benefits based upon the degree of medical necessity but not upon the medical disorders from which the person suffers." (Footnote omitted.) Here Pinneke proved a real need for the only medical service available to alleviate her condition, and the record indicates her condition has improved since the surgery.

[5] Appellants lastly argue that transsexual surgery is excluded by the language of 42 U.S.C. § 1396d(a), providing two exclusions for mental diseases. The clear language of these exclusions, however, strictly limits them to situations involving payment for "services in an institution for tuberculosis or mental disease." Appellants' only attempt to fit within these exclusions is the suggestion that Pinneke's medical condition requiring surgery was a mental disease. The statutory limitations, however, do not apply to mental health problems in general. Pinneke's transsexual surgery thus comes within the medical assistance categories of "inpatient hospital services" and "physicians' services furnished by a physician," and must be covered under the state's Medicaid plan unless not medically necessary.

The decision of the District Court is affirmed.

admission to a hospital, order tests, drugs and treatments, and determine the length of stay. For this reason the bill would require that payment could be made only if a physician certifies to the medical necessity of the services furnished. * * *

THE END OF AN ERA

ARC/Florida Suit Closes Institution

“ ...Defendants shall continue to implement their current plan to depopulate the Center. After July 1, 1984, the Defendants shall no longer use the Center as a residential facility for the developmentally disabled. ”

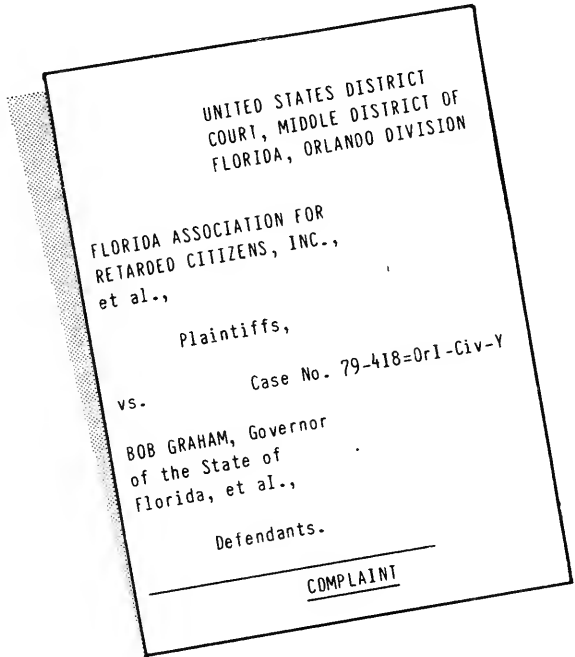
**- Order signed by U.S. District
Judge Elizabeth A. Kovachevich
October 1, 1982.**



**Association for
Retarded Citizens/Florida**

THE END OF AN ERA

Closing the Doors of Orlando Sunland Training Center



THE SETTLEMENT AGREEMENT AND ORDER OF
U.S. DISTRICT JUDGE ELIZABETH A. KOVACHEVICH
October 1, 1982
...And Other Materials Pertaining to the Suit.

THIS PUBLICATION IS DEDICATED TO THOSE WHO SUFFERED IN
SILENCE AND THOSE WHO SPOKE OUT TO END THAT SUFFERING.

Published by the Association for Retarded Citizens/Florida
with the hope that this information may assist other ARC's
and advocates in their efforts to improve the lives of
persons with mental retardation everywhere.

Additional Copies \$1.00

Send To:

Association for Retarded Citizens/Florida
309 Office Plaza
Tallahassee, Florida 32301
(904) 878-6121

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The Orlando Sentinel

Saturday, October 2, 1982

Sunland to close by July '84

By Rosemary Goudreau

OF THE SENTINEL STAFF

Orlando's Sunland Center for the mentally retarded will be closed by July 1984 under an agreement signed Friday by U.S. District Judge Elizabeth Kovachevich. . . .

Signing of the agreement marked the end of a three-year legal battle by the Florida Association for Retarded Citizens to close the 527-bed Sunland Center and move its retarded residents into neighborhood facilities.

"Community placements have the potential to provide far superior care than in a large institutional setting," said association attorney Albert Hadeed.

The suit was brought in 1979 to hasten the closing of Sunland, which state lawmakers had decided should be closed.

Parents whose children received daily medical attention at Sunland for complications that accompanied their brain damage told the judge they were concerned their children would not survive unless they were in a medical facility.

Several types of facilities are being built across the state to house the retarded being moved out of Sunland. Some offer more medical services than others, but none qualify as a hospital.

Because of allegations that the state has moved the profoundly retarded into homes that cannot handle medical problems, HRS officials reviewed each Sun-

land resident's medical history to determine what type of home each would need.

HRS identified 73 Sunland residents whose medical problems would preclude them from fitting into the facilities being built. . . .

Hadeed assured the audience of parents and HRS workers that the smaller facilities would provide better care because they must meet tougher federal standards for funding. Orlando's Sunland cannot receive federal funding because it fails to meet those staffing and housing standards.

Please see SUNLAND, C-6

From C-1

In addition to stipulating the date for closing Sunland, the settlement also requires the Orange County School Board to coordinate the transition of educational services for retarded citizens being moved back to their hometowns. The school system now provides free education to all retarded persons ages 5 to 18 living in the community.

The school board also must find surrogate parents who will serve as advocates for the retarded children whose parents are not involved in their care.

INTRODUCTION

On August 30, 1979, the Association for Retarded Citizens/Florida and six individual residents of the Orlando Sunland Center filed a federal class action lawsuit against officials of the State of Florida alleging that the State defendants failed to provide Plaintiffs with adequate facilities and services so as to meet constitutional standards for the mentally retarded residents of Orlando Sunland.

That bland statement, of course, fails to touch the drama, the horror, and the impact of all that surrounds the history of the Orlando Sunland, the lawsuit, and the settlement of this major case. When the four-story former tuberculosis hospital was opened in 1960 as a residential facility for nonambulatory persons with mental retardation, no one suspected that its existence would be fraught with controversy and conflict or that its residents would eventually be placed in a series of community settings that may be a model for the nation. Yet today, as the lawsuit moves into its implementation stage, this promise of superior care and habilitation for some of the most profoundly handicapped citizens can be realized.

Since 1972, the ARC, the Florida Legislature, the press, and individual citizens had been concerned with allegations of warehousing, subhuman treatment, and dangerous, life-threatening conditions at the institution. Blue Ribbon task forces, investigations, corrective action plans were formulated, but action was slow or non-existent. Two events

finally spurred action. In 1977, through the efforts of ARC/Florida and others, the Florida Legislature passed a revision of Chapter 393, Florida Statutes, the Retardation Prevention and Community Services Act. Encoded into law was a mandate that the State give greatest priority to the development and implementation of community-based residential services, and that persons be diverted or removed from unnecessary institutional placements.

To implement this, the Legislature appropriated money for the development of a system of community "cluster" facilities to serve the severely disabled populations of Tallahassee and Orlando Sunlands.

These were major steps and represented Florida's commitment to close the two facilities, eventually. It was that "eventually" which disturbed the advocates. It soon became apparent that the clusters were not universally popular, and bureaucratic foot-dragging became the order of the day. At the same time, conditions for residents remained woefully inadequate and dangerous at the institution. Unable to coax the State to provide firm timelines and commitments, the ARC/Florida and the plaintiffs were forced to file suit to test the constitutionality of further confinement of residents at Orlando Sunland.

It is not to be assumed that this was in any way a "friendly" suit. While the State proceeded with the cluster development plans, it resisted the plaintiffs at every stage of the

lawsuit, refusing to be bound, to make concessions, or to initiate major improvements in care and treatment. Faced finally with the possibility of going to trial on the issues, the Defendants agreed to enter into serious negotiations which, after much effort, resulted in a settlement entered into by all parties and an Order approving the settlement issued by the federal District Court on October 1, 1982.

The Settlement Agreement will benefit the class member residents of Orlando Sunland in two ways: first, it calls for significant interim improvements in the programs and treatment at the Center, and in physical plant safety; Secondly, it mandates the transfer and placement of all residents into community placements by July 1, 1984, and forbids the Defendants to operate the Orlando Sunland as a residential facility for the developmentally disabled after December 31, 1984.

The implications and significance of the outcome of this lawsuit are impossible to overstate. The placement of the most severely and profoundly mentally handicapped and physically impaired citizens of this State into small community-based facilities presents an opportunity and challenge to every person and every idea in this field. The successful treatment and habilitation of these persons in the community should forever bury the concept of institutionalization and elevate the developmental model to its rightful level.

Many individuals were essential to the success of this cause. Gratitude should first be extended to the named plaintiffs who were

residents of the Orlando Sunland and whose violated rights resulted in events which brought about this historical accomplishment: Gwen-dolyn J. Thomas, Diane Collins, Charles E. Graham, Constance Mitchell, Deborah Lynn Buchanan and J. C. Scott. The skill and dedication of the attorneys involved in the case are much appreciated: lead attorneys - Larry Morgan of Greater Orlando Legal Services (who succeeded William Barker), and Al Hadeed of Southern Legal Counsel; the back-up assistance of the Governor's Commission on Advocacy for the Developmentally Disabled, and the Mental Health Law Project; and the members of the ARC/Florida Ad Hoc Litigation Committee.

The essential role of the ARC/Florida volunteers and members in prosecuting this suit continues now in its appointed role as monitor of the State's compliance with the mandates of the court order. To oversee successful implementation of the decree, and an improved life for those persons whom it affects, is a task of the highest order to which the ARC dedicates itself.

Glenn L. Lee, President
Thomas P. Carroll, Executive
Director, ARC/Florida

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FLORIDA ASSOCIATION FOR RETARDED
CITIZENS, INC.; GWENDOLYN J. THOMAS,
an infant, by her mother, REBECCA
THOMAS; CONSTANCE K. MITCHELL; DEBORAH
LYNN BUCHANAN; J. C. SCOTT; DIANE
COLLINS, by her legal guardian, C. W.
COLLINS; CHARLES E. GRAHAM, by his
legal guardian, CLARA GRAHAM, on
behalf of themselves and all others
similarly situated.

Plaintiffs,

vs.

CASE NO. 79-418-Orl-Civ-Y

BOB GRAHAM, Governor of the State of
Florida; DAVID H. PINGREE, Secretary,
Department of Health & Rehabilitative
Services; PHYLLIS ROE, Assistant Sec-
retary, Department of Health & Rehabili-
tative Services; ABE LAVINE, Assistant
Secretary, Department of Health & Re-
habilitative Services; CHARLES KIMBER,
Director, Developmental Services Prog-
ram Office, Department of Health &
Rehabilitative Services; LUDY D. HADI,
Administrator, District VII, Depart-
ment of Health & Rehabilitative
Services; NOEL F. WINDSOR, Superin-
tendent of Sunland Training Center,
Orlando, Florida; STATE BOARD OF
EDUCATION; RALPH D. TURLINGTON, Com-
missioner of Education, SCHOOL BOARD
OF ORANGE COUNTY, FLORIDA,

Defendants.

ORDER

WHEREAS, the Complaint herein was filed on August 30, 1979, on behalf of Plaintiffs and others similarly situated, alleging, inter alia, that the Defendants have failed to provide Plaintiffs with adequate facilities and services so as to comply with minimal constitutional standards for the mentally retarded and Defendants have, therefore, caused Plaintiffs' continued confinement under conditions that violate Plaintiffs' constitutional rights; and

WHEREAS, the Complaint asserts causes of action against Defendants arising under the First, Fourth, Fifth, Eighth, Ninth, and Fourteenth Amendments to the Constitution of the United States; the Rehabilitation Act of 1973, 29 U.S.C. § 794; the Developmentally Disabled Assistance and Bill of Rights Act, 42 U.S.C. § 6001 et seq.; the Education for all Handicapped Children Act of 1975, 20 U.S.C. § 1401 et seq.; 42 U.S.C. § 1983; 28 U.S.C. §§ 1331, 1343(3) and (4) and 1337; 28 U.S.C. §§ 2201 and 2202; F.S. 393.061 et seq.; F.S. 228.001 et seq.; F.S. 402.22; and Rules 57 and 65 of the Federal Rules of Civil Procedure; and

WHEREAS, Defendants have filed an Answer denying the allegations in the Complaint; and

WHEREAS, the parties agree that pursuant to Rule 23 of the Federal Rules of Civil Procedure, this action may be maintained as a class action on behalf of all persons who now are and in the future will be clients in the Orlando Sunland Training Center, Orlando, Florida; and

WHEREAS, the parties, in settlement of this action, have entered into a Settlement Agreement which sets forth the terms and conditions upon which this case is to be settled, and have consented to the entry of this Order without trial or adjudication of any issue of fact or law herein, and

WHEREAS, the Court has jurisdiction over both the parties and the subject matter of this action; and

WHEREAS, the Court, being fully advised, is satisfied that this Order has been freely agreed to by the parties and that the parties' Agreement is fair, adequate, equitable and reasonable;

NOW, THEREFORE, with the consent of the parties hereto to bind themselves, their officers, employees, agents, successors and all those acting in concert or participating with them, it is hereby:

ORDERED, ADJUDGED AND DECREED as follows:

1. The following class of Plaintiffs is certified, pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure: All persons who now are or in the future will be resident clients in the Orlando Sunland Training Center, Orlando, Florida.

2. Defendants provided notice of the Agreement and the terms and conditions of the proposed Settlement, in the manner set forth in Paragraph II of the Settlement Agree-

ment, to those members of the Plaintiffs' class who were resident clients in the Orlando Sunland Training Center between July 9, 1982, and July 29, 1982. The Court finds that such notice was adequate and satisfies the requirements of Rule 23(e), Federal Rules of Civil Procedure.

3. The Agreement, including each of its terms, conditions and exhibits, is hereby approved and adopted.

4. Defendants, their officers, employees, agents, successors, and all those acting in concert or participating with them shall fully comply with and enforce the terms of this Order and the Agreement, which is incorporated herein.

5. The taxable costs of this

action, shall be borne in full by Defendant Secretary of the Department of Health and Rehabilitative Services in his official capacity.

6. The Court shall retain jurisdiction over this action for the purpose of enabling any party to this Order to apply to the Court at any time for such further orders as may be necessary or appropriate, for the execution and enforcement of compliance with this Order and the Agreement, and for such other and further action or relief as the Court deems appropriate.

Dated:
October 1, 1982
Orlando, Florida
ELIZABETH A. KOVACHEVICH
United States District Judge

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is entered into by the below listed parties to this litigation in order to resolve and finally settle all disputes and controversies between said parties arising out of the claims asserted by the Plaintiffs in their Complaint regarding the operation, conditions and delivery of services at the Orlando Sunland Training Center (hereinafter "Center") in Orlando, Florida.

The parties to this Settlement Agreement are:

1. The FLORIDA ASSOCIATION FOR RETARDED CITIZENS, INC. (hereinafter "FARC"), a non-profit corporation incorporated in the State of Florida, individually and as representative of all persons who are presently or who hereafter will be resident clients at the Center, by and through counsel.

2. Plaintiffs, GWENDOLYN J. THOMAS, DIANE COLLINS and CHARLES E. GRAHAM, individually, and as representatives of all persons who are presently or who hereafter will be resident clients at the Center, by and through counsel.

3. Plaintiffs, CONSTANCE MITCHELL, DEBORAH LYNN BUCHANAN and J. C. SCOTT, individually and as representatives of all persons who are presently or who hereafter will be resident clients at the Center, by and through their court-appointed guardian ad litem, Norman Hull, and their counsel.

4. Defendant, BOB GRAHAM, as Governor of the State of Florida, by

and through counsel.

5. Defendant, DAVID H. PINGREE, as the Secretary of the Department of Health and Rehabilitative Services, by and through counsel.

6. Defendant, PHYLLIS ROE, as the Assistant Secretary for Operations, Department of Health and Rehabilitative Services, by and through counsel.

7. Defendant, ABE LAVINE, as the Assistant Secretary for Program Planning and Development, Department of Health and Rehabilitative Services, by and through counsel.

8. Defendant, CHARLES KIMBER, as the Director of the Developmental Services Program Office, Department of Health and Rehabilitative Services, by and through counsel.

9. Defendant, LUCY D. HADL, as the District VII Administrator, Department of Health and Rehabilitative Services, by and through counsel.

10. Defendant, NOEL D. WINDSOR, as the Superintendent of the Center, by and through counsel.

11. Defendant, STATE BOARD OF EDUCATION of the State of Florida, as the body corporate which heads the Department of Education, by and through counsel.

12. Defendant, RALPH D. TURLINGTON as the Commissioner of Education, by and through counsel.

REPRESENTATIONS OF PARTIES

WHEREAS, the Complaint herein was filed on August 30, 1979, on behalf of Plaintiffs and others similarly situated, alleging, inter alia, that the Defendants have failed to provide Plaintiffs with adequate facilities and services so as to comply with minimal constitutional standards for the mentally retarded and Defendants have, therefore, caused Plaintiffs' continued confinement under conditions that violate Plaintiffs' constitutional rights; and

WHEREAS, the Complaint asserts causes of action against Defendants arising under the First, Fourth, Fifth, Eighth, Ninth and Fourteenth Amendments to the Constitution of the United States; the Rehabilitation Act of 1973, 29 U.S.C. §794; the Developmentally Disabled Assistance and Bill of Rights Act, 42 U.S.C. §6001 et seq.; the Education for all Handicapped Children Act of 1975, 20 U.S.C. §1401 et seq.; 42 U.S.C. §1983; 28 U.S.C. §1331, 1343(3) and (4) and 1337; 28 U.S.C. §§2201 and 2202; F.S. 393.061 et seq.; F.S. 228.001 et seq.; F.S. 402.22 and Rules 57 and 65 of the Federal Rules of Civil Procedure; and

WHEREAS Defendants have filed an Answer denying the allegations in the Complaint; and

WHEREAS the signatories to this Settlement Agreement represent that they are authorized to enter into this Agreement and to take all steps required of them by this Agreement; and

WHEREAS, Plaintiffs consider it desirable and in their best interests, and in the best interests of

the members of Plaintiffs' class, to settle the issues set forth herein by entering into this Agreement; and

WHEREAS, Defendants consider it desirable and in their best interests and in the best interests of the Department of Health and Rehabilitative Services and the Department of Education and the State of Florida, to settle the issues set forth herein by entering into this Agreement; and

WHEREAS, the parties have entered into this Agreement as a compromised settlement of their disputes, intending that this Agreement shall not be construed in any way as defining constitutional or statutory minima, thresholds or standards, nor as an admission that any condition, policy, rule, procedure, act or omission of the Department of Health and Rehabilitative Services or any employee or agent thereof was or is in any way in violation of any rights of Plaintiffs; and

WHEREAS, this Agreement shall not be admissible in evidence in any proceedings or trials other than for the purposes specified in this Agreement.

NOW, THEREFORE, the parties, by and through their counsel, hereby stipulate and agree as follows:

I. SETTLEMENT CLASS.

1. This action by agreement of the parties shall be maintained as a class action on behalf of all persons who now or in the future will be resident clients in the Center.

II. NOTICE TO CLASS MEMBERS.

1. Pursuant to Rule 23(e), Federal Rules of Civil Procedure, Defendants shall, within ten (10) days of execution of this Agreement, provide notice of this Agreement to those members of the Plaintiffs' class presently confined in the Center, in a place accessible to clients, a notice in the form attached herein as Exhibit "A" and by individual notice to all the guardians of the members of the Plaintiffs' class. The costs of providing such notice shall be borne by Defendants, in their official capacities. Class members shall have twenty (20) days after notice to them to file with the Clerk of the Court any written objections to this Agreement. All objections will be considered fully by the Court.

III. SUBMISSION TO COURT OF SETTLEMENT AND USE OF BEST EFFORTS TO OBTAIN APPROVAL.

1. Promptly upon execution of this Agreement, counsel for the parties shall jointly submit each Agreement to the Court for its approval and recommend that the Court approve the Agreement. Counsel for both parties also shall take all steps that may be required or requested by the Court and use their best efforts to consummate this settlement, obtain the Court's approval of this Agreement, and obtain entry of a final judgment.

IV. EFFECTIVENESS OF AGREEMENT.

1. This Agreement shall be effective immediately upon entry of an Order of the Court approving it. In the event that the Court declines to approve this Agreement or any portion herein, this Agreement shall be null

and void and without prejudice to the parties' rights.

V. TERMS OF SETTLEMENT.

A. Dismissal of Certain Defendants.

1. The parties hereby agree to the dismissal of Defendant RALPH D. TURLINGTON and the Defendant STATE OF FLORIDA BOARD OF EDUCATION as party Defendants, such dismissal to be without prejudice. Those Defendants shall have no obligations hereunder and any reference to obligations of Defendants shall not be read to include these Defendants.

B. Compliance with Chapter 393, Florida Statutes.

1. The Defendants take the position in this litigation that they have at all times been in compliance with the requirements of Chapter 393, Florida Statutes, the "Retardation Prevention and Community Act," and represent as a term and condition to this Settlement Agreement that they will at all times comply with the terms and conditions of said act, and further represent and admit that the undertakings which they agree to perform pursuant to this Agreement are consistent with the requirements of said Chapter 393, Florida Statutes.

2. Defendants agree that there shall be no bathing or toileting on open wards, and further with respect to bathing and toileting, the Defendants shall provide complete visual privacy for clients.

3. Defendants agree that there shall be a full habilitation planning committee meeting annually for each

client prior to his or her community placement and one full habilitation planning committee meeting within one year after community placement. Thereafter, clients shall have habilitation planning in accordance with Department of Health and Rehabilitative Services procedures applicable to all other developmentally disabled clients.

4. The Plaintiffs or their designee shall, with respect to class members, be allowed to review habilitation plans, to participate in habilitation meetings and to receive notice of such meetings from the time this Settlement Agreement is signed and concluding three (3) years after the closing of the Center. Plaintiffs agree that their attendance and participation at habilitation meetings shall be at the expense of Plaintiffs and said Plaintiffs will not look to Defendants for reimbursement, regardless of any other provisions of this Agreement. Plaintiffs further agree to give Defendants timely notice of the person designated to attend said habilitation meeting.

C. Tube Feeding.

1. The Defendants shall implement within ninety(90) days the general and client specific recommendations of the "Orlando Sunland Review" authored by Dr. L. O. Linton in March of 1981 attached herein as Exhibit "B". The Defendants shall insure that appropriate and sufficient staff at the Center shall be hired, if necessary, and assigned to evaluate tube fed class members at the Center, to develop appropriate programs for them to implement these programs and to conduct appropriate follow-up. The Alimentary Evaluation Team (ATE) employed by the Defendants shall have the "Orlando Sunland Re-

view" made available to them. Finally, the Defendants shall insure that there is an appropriate transition of the programming initiated at the Center for tube fed residents when they are subsequently transferred to community placement.

D. Sanitation.

1. The Defendants shall request semi-annual inspections by the Orange County Health Department. The Defendants shall act on the recommendations of these inspections and provide Plaintiffs with copies of the inspections and with notification of compliance with the recommendations.

E. Medication.

1. The Defendants shall comply with applicable rules and procedures regarding the administration of drugs as contained in the Department of Health and Rehabilitative Services Manual 160-6 and the Department of Health and Rehabilitative Services Regulation 95-3. The Defendants shall insure that there is an appropriate transition of drug regimens of class members at the Center when they are transferred to community placements.

F. Physical Therapy.

1. The Defendants shall continue to contract for the consultative services of a physiatrist for a minimum of two (2) hours per month with the ability to utilize additional hours up to a maximum of ten (10) hours per month depending upon the need for such services as determined by the medical and physical therapy departments of the Cen-

ter. Defendants shall provide within six (6) months of the date of this Settlement Agreement, the adaptive equipment that has been prescribed by the P.T. Director of the Center for all those residents currently on a waiting list to receive adaptive equipment. Thereafter, the Defendants shall provide the adaptive equipment for the residents of the Center as prescribed by the P.T. Director as needed.

Within six (6) months from the execution of this Agreement, the Center's physical therapy director shall assess the physical therapy programs of the Center's residents prescribed in their habilitation plans to determine the physical therapy staff hours necessary to implement such programs. A copy of this inventory shall be furnished to the Plaintiffs upon completion. No later than six (6) months from the execution of this Agreement, the Defendants shall employ or contract for, at their discretion, sufficient physical therapists and physical therapy assistants to meet the staffing requirements shown by the inventory if they exceed the staff resources then available at the Center. Thereafter, adequate physical therapy staff shall be maintained to implement the programming requirements of the habilitation plans for the remaining residents at the Center. The Defendants shall furnish the Plaintiffs with notifications that the staffing requirements have been met contemporaneously with compliance.

G. Admissions.

1. The Defendants shall not admit any residents to the Center beginning on July 1, 1983. Prior to

July 1, 1983, no more than a total of nineteen (19) residents shall be admitted according to the criteria presently in effect by the Defendants.

H. Future Staffing.

1. No later than six (6) months from the execution of this Agreement, the Defendants shall maintain sufficient direct care staff on each ward to meet ICF/MR standards as contained in Rule 10D-38.24, Florida Administrative Code. For all other staff, the Defendants shall assess the staff hours required to implement the programming prescribed in the habilitation plans of the Center's residents.

A copy of this inventory shall be furnished to the Plaintiffs upon completion. Within six (6) months from the execution of this Agreement, the Defendants shall employ or contract for, at their discretion, sufficient staff to meet the staffing requirements shown by the inventory if they exceed the staff resources then available at the Center. The Defendants shall furnish the Plaintiffs with notification that the staffing requirements have been met contemporaneously with compliance. Thereafter, adequate staffing shall be maintained to implement the programming requirements of the habilitation plans for the remaining residents at the Center.

I. Transitional Services.

1. Defendants shall prepare and implement a complete operational plan including a descriptive sequence of activities and events, time-frames, accountability and resources which will insure the continuity and appropriateness of care for clients

moving to community facilities. The Department of Health and Rehabilitative Services' Document entitled "Living in a House, District Cluster Planning Guide" shall serve as the approved operational plan to the extent it is kept current and inclusive of all components of the client placement system including but not limited to:

- a. Policies, procedures, protocols.
- b. District procedures and agreements.
- c. Standard contracts.
- d. Budgeting procedures for clusters and community ICF/MR's.

2. Individual district or facility operational plans shall be in conformance with the above-referenced plan but may include district or facility specific differences.

3. A habilitation plan for each client shall be prepared within ninety (90) days prior to the date the client is placed in the community and shall include a plan of placement.

4. There shall be coordination between the Center staff with staff at the community placement that is client specific. Such coordination shall be in person and shall include meetings between institution and community medical personnel preceding client movement.

5. The clients' community case worker and a member of the professional staff of the community facility will participate with the clients' institutional habilitation

planning team in developing the plan. This plan shall specify in detail the type of residence, programs and support services needed by the client.

6. No client shall be placed until programming and support services are in place.

7. The Department of Health and Rehabilitative Services shall make provision for filling unexpected vacancies in community facilities according to the same standards set forth above.

J. Deinstitutionalization of the Center.

1. Defendants shall continue to implement their current plan to depopulate the Center. After July 1, 1984, the Defendants shall no longer use the Center as a residential facility for the developmentally disabled. For six (6) months after July 1, 1984, the Defendants may continue to operate the Center if the Defendants can demonstrate the impossibility of providing sufficient community replacement facility beds for the residents remaining at the Center by July 1, 1984.

If the Defendants are unable to close the Center by July 1, 1984, they must submit documentation to the Plaintiffs demonstrating their inability to close the Center. If the Plaintiffs are not satisfied with the Defendants' reasons for continuing to operate the Center after July 1, 1984, the issue will be resolved by the Court. Under no circumstances will the Defendants operate the Center as a residential

facility for the developmentally disabled after December 31, 1984.

2. Defendants shall abide by the construct of community placement for Center clients as stated in the document entitled "Population Phase Down of Sunlands at Tallahassee and Orlando," dated May 19, 1982, attached herein as Exhibit "C".

K. Fire Safety.

1. Defendants shall employ or contract for consultation with a qualified fire safety engineer.

a. To prepare a fire safety study together with the fire prevention inspector at the Center of the living units at the Center within ninety (90) days with the following objectives:

1) Determine structural problems concerning horizontal and vertical evacuation and make recommendations for overcoming the problems identified.

2) Determine the number of staff needed on each ward to make horizontal and vertical evacuation feasible and make appropriate staffing recommendations.

3) Determine the time necessary to horizontally and vertically evacuate each ward.

4) Determine the most appropriate method or methods for moving residents in a horizontal and vertical evacuation of each ward.

5) Determine the most appropriate and meaningful evacuation route diagrams and other fire safety information that should be posted in each ward.

6) Determine the appropriate responsibilities of the fire department, maintenance department employees, supervisory employees and direct care staff in a fire emergency involving horizontal or vertical evacuation.

7) Determine most effective way to train employees at the Center concerning horizontal and vertical evacuation.

b. To review and revise, where appropriate, the fire safety evacuation plan for the Center.

c. To prepare and implement a fire safety orientation program which will include instructions on:

1) Employee compliance with the life safety code.

2) Unit evacuation procedures.

3) Identification of types of fires.

4) Procedures for reporting a fire.

d. To prepare and implement a formal, ongoing fire safety program which shall include:

1) Quarterly fire drills on all the units and all shifts with exercises on the control of fires and on actual hypo-

thetical horizontal and vertical evacuation procedures.

2) Posting horizontal and vertical evacuation plans with diagrams that contain clear, accurate and prioritized instructions.

3) Procedures for assuring that all mattresses and mattress covers are made of low-flame, low-smoke, fire-retardant materials.

4) Installation of a public address system that meets the requirements of the National Fire Protection Association, State Number 72 A, "Local Protection Signal System." This shall not be interpreted to require installation of an entirely new public address system.

5) Implementation of a system for reaching the switchboard operator for emergencies which is given priority over normal access means.

6) Implementation of a fire response program that would employ a second person qualified as an operator to assist the switchboard operator in emergencies.

7) Development and implementation of an incentive or disciplinary program for obtaining improved employee compliance with fire safety code requirements.

8) Implementation of appropriate identification and labelling methods at all extinguisher and manual pull box alarm stations including a sign identifying the equipment, a

color coded area around the equipment of regulation sites, a red painted floor area outlined with white at each location to be free of obstructions.

9) Implementation of a regular, formal program for identifying and correcting inoperable fire safety equipment and fire safety-related equipment.

10) Such other procedures or activities as may be required by the life safety code or applicable state statutes or regulations.

2. Defendants shall train all the direct care and living unit staff consistent with the findings and recommendations made as a result of the fire safety evacuation study within thirty (30) days after the study has been completed.

3. The order of priority for reducing the population of the Center should be:

a. Removal of all residents off the third floor.

b. Removal of all residents off the second floor.

c. Removal of all residents off the first floor.

4. The Defendants shall furnish to the Plaintiffs copies of all inspection reports conducted by the State Fire Marshall or his designated agent within thirty (30) days of their delivery to the Defendants. Defendants shall also furnish the Plaintiffs with copies of any corrective action plans prepared by Defendants in response to State Fire Marshall reports. The Defendants shall correct all violations

cited by the State Fire Marshall pertaining to fire safety.

VI. ENFORCEMENT OF DECREE.

1. The Defendants agree that for a period of one and a half years from the approval of this Settlement Agreement by the Court and the signing of an Order evidencing such approval, they shall submit a written report to counsel for the Plaintiffs and to the Court every three (3) months setting out the status of the Defendants' compliance with each and every aspect of this Settlement Agreement. Said report shall be due fifteen (15) days after the end of each said quarter.

2. Defendants shall have the discretion to document said report as they see fit. However, Plaintiffs, by and through their counsel, shall have the right, on reasonable notice, to examine the Center records and records of clients who are members of the class, to inspect the Center's physical plant and community facilities in which class members reside, to visit and speak with said class members and staff at the Center and at community-based facilities, and to receive briefings from employees of the Department of Health and Rehabilitative Services with regard to said report. Defendants shall assist and cooperate with Plaintiffs in their compliance activities involving the applicable community facilities.

Plaintiffs shall keep all information obtained that is client identifiable completely confidential except to the extent that it is necessary for disclosure in this litigation. The Defendants shall provide notice to the staff of the

right of the Plaintiffs and staff to mutually communicate and confer concerning compliance with the decree.

3. For a period extending one and one half (1-1/2) years after the signing of a Court Order approving the Settlement Agreement and continuing for a period one year after the final closing of the Center, the Department of Health and Rehabilitative Services shall submit reports, as required in Paragraph VI.1. every six (6) months, and the Plaintiffs shall have the same rights as are set out in Paragraph VI.2. with regard to said reports except that such rights shall extend for an additional period of six (6) months after the Department of Health and Rehabilitative Services' last report. This period may be extended upon agreement of the parties or upon application to the Court by the Plaintiffs upon a showing of good and sufficient cause.

4. Plaintiffs, by and through their counsel, shall have the same rights as set out in Paragraph VI.2. at anytime in an emergency. Plaintiffs must make a request to Defendants to exercise the rights as set out in Paragraph VI.2. in an emergency. If the Defendants do not agree to Plaintiffs' request, Plaintiffs can make their request directly to the Court which shall determine the existence of an emergency.

5. The Court shall retain continuing jurisdiction to enforce the Order approving and adopting the Agreement upon petition of counsel for the Plaintiffs.

6. Counsel for the Plaintiffs

shall be entitled, on a periodic basis, on application to Defendants, for reasonable fees and reasonable expenses in connection with their activities under Paragraph V of this Agreement. If the Defendants are not satisfied that the Plaintiffs' fees and expenses are reasonable, the Defendants must contest the reasonableness of the fees and expenses by motion to the Court.

Said counsel shall further have authority, subject to reasonable necessity, to employ qualified assistants to assist in the discharge of their compliance responsibility, and shall be entitled to reimbursement of reasonable expenses for such employment. The parties agree that the total of all fees and expenses incurred by the Plaintiffs shall not exceed THIRTY-SIX THOUSAND (\$36,000) DOLLARS per annum unless the Plaintiffs have shown good cause to the Court why any additional fee and expenses are necessary and shall have obtained Court approval therefore.

VII. MEDICAL REPLACEMENT FACILITY.

1. The Department of Health and Rehabilitative Services shall perform a study with regard to the necessity and feasibility of establishing a twenty (20) bed hospital which shall serve as a replacement for the Center's present Constant Care Unit, to provide in-patient and out-patient care and medical services not otherwise available in the community.

VIII. NON-WAIVER OF DEFENSES.

1. Defendants do not herein waive any defenses available to them or any agency or agent of the State

of Florida now or in the future. In particular, Defendants do not by entering into this Agreement waive the defense of the Eleventh Amendment or any immunity on behalf of themselves or any agent or agency of the State of Florida.

IX. APPEALABILITY.

1. Neither party will appeal the Order attached hereto as Exhibit "D" if such Order is entered by the Court.

X. COSTS AND FEES.

1. The parties agree that Plaintiffs are the prevailing parties in this action and, as such, are entitled under 42 U.S.C. §1988 to reasonable attorneys fees as part of their costs. Plaintiffs' counsel shall submit appropriate papers to the Court.

XI. ENTIRE AGREEMENT.

1. This Agreement and its exhibits contain the entire agreement between the parties.

STIPULATED AND AGREED to this 8th day of July, 1982.

FOR THE PLAINTIFFS:

LARRY MORGAN, ESQ.
Greater Orlando Area
Legal Services, Inc.

ALBERT J. HADEED, ESQ.
Southern Legal Counsel, Inc.

NORMAN L. HULL, ESQ.
Guardian Ad Litem for
Constance Mitchell, Deborah
Lynn Buchanan and J. C. Scott

JANE BLOOM VOHALEM, ESQ.
Developmental Disabilities
Rights Center of the Mental
Health Law Project

FOR THE DEFENDANTS:

SYDNEY H. MCKENZIE, III, ESQ.
Chief Trial Counsel
Department of Legal Affairs
The Capitol

DOUGLAS E. WHITNEY, ESQ.
District Counsel - District VII
Department of Health and Rehabili-
tative Services.



Orlando Sunland, a four-story former tuberculosis hospital, was opened in 1960 as a residential facility for nonambulatory persons with mental retardation.

POPULATION PHASEDOWN
OF
SUNLANDS AT TALLAHASSEE AND ORLANDO
1981-82

	Date	Tallahassee	Date	Orlando
<u>Population*</u>	5/15/82	203	5/15/82	572
<u>Other Discharges**</u>				
Tallahassee Development Center (Pensacola Care)	6/10/82	42		
<u>Ending Population</u>	6/30/82	161	6/30/82	572

* Thus far this fiscal year, 56 individuals (48 from Sunland at Tallahassee and eight from Sunland at Orlando) have been placed in Clusters. An additional three individuals have been placed in community ICF/MFs. Also, 32 ICF/MR beds continue to operate on Sunland grounds.

** Community ICF/MR beds shown here are those to be used for Orlando and Tallahassee placements. They do not represent the total number of beds in a facility.

POPULATION PHASEDOWN
OF
SUNLANDS AT TALLAHASSEE AND ORLANDO

1982-83

Cluster Number	Action	Date	Tallahassee	Date	Orlando
	<u>Beginning Population</u>	7/1/82	161	7/1/82	572
	<u>Cluster Discharges</u>				
#7	Lantana	11/1/82	2	11/1/82	22
#1	St. Petersburg	12/1/82	1	12/1/82	15
#31	Bartow	12/1/82	1	12/1/82	23
#6	Tallahassee	1/1/83	24		
#27	Tampa			2/1/83	20
#30	Palm Beach			2/1/83	24
#18	Pensacola	4/1/83	22	4/1/83	2
#17	Panama City	4/1/83	18	4/1/83	6
#14	Jacksonville	4/1/83	24		
#15	Tallahassee	4/1/83	15	4/1/83	5
#20	Jacksonville	4/1/83	22		1
#16	Gainesville	4/1/83	11	4/1/83	12
#24	Daytona			4/1/83	24
#9	Miami			4/1/83	24
#13	Gainesville	5/1/83	15	5/1/83	8
#28	Broward			5/1/83	24
#5	Ft. Myers			5/1/83	23
#26	Ocala	6/1/83	2	6/1/83	22
#25	Tampa			6/1/83	24
	<u>Other Discharges</u>				
	Friendly Village I			7/1/82	43
	Friendly Village II			10/1/82	43
	Fern Court North			12/1/82	43
	Tampa Development Center (Pensacola Care)			3/1/83	39
	Non-ICF/MR Placements		4		
	<u>Ending Population Due to Discharges</u>	6/30/83	0	6/30/83	125

POPULATION PHASEDOWN
OF
SUNLANDS AT TALLAHASSEE AND ORLANDO

1983-84

Cluster Number	Action	Date	Tallahassee	Date	Orlando
	<u>Beginning Population</u>	7/1/83	-0-	7/1/83	125
	<u>Cluster Discharges</u>				
#10	Miami			7/1/83	24
#11	Miami			3/1/84	24
#12	Miami			3/1/84	24
#8	Avon Park			3/1/84	24
#21	Tallahassee (Lonnie Rd/Other)			3/1/84	24
	<u>Non-ICF/MR Placements</u>				5
	<u>Ending Population</u>	6/30/84	-0-	6/30/84	-0-

PERTINENT SECTIONS OF FLORIDA STATUTES

393.061 Short title. - This act shall be known and may be cited as the "Retardation Prevention and Community Services Act."

393.062 Legislative findings and declaration of intent. - The Legislature finds and declares that existing state programs for the treatment of retarded and other developmentally disabled individuals, which often unnecessarily place clients in large state institutions, are unreasonably costly, are ineffective in bringing the individual client to his or her maximum potential, and are in fact debilitating to a great majority of clients. A redirection in state treatment programs for the retarded and other developmentally disabled individuals is necessary if any significant amelioration of the problems faced by such individuals is ever to take place. Such redirection should place primary emphasis on programs that have the potential to prevent or reduce the severity of retardation and other developmental disabilities.

Further, the legislature declares that greatest priority shall be given to the development and implementation of community-based residential placements, services, and treatment programs for the retarded and other developmentally disabled individuals which will enable such individuals to achieve their greatest potential for independent and productive living, which will enable them to live in their own communities, and which

will permit clients to be diverted or removed from unnecessary institutional placements. Finally, the legislature declares that, in developing community-based programs and services for retarded and other developmentally disabled individuals, private businesses, not-for-profit corporations, units of local government, and other organizations capable of providing needed services to clients in a cost-efficient manner shall be given preference in lieu of operation of programs directly by state agencies.

393.066 Community services and treatment for the retarded and other developmentally disabled. -

(1) The Department of Health and Rehabilitative Services shall plan, develop, organize and implement its programs of services and treatment for the retarded and other developmentally disabled persons along district lines. The goal of such programs shall be to allow clients to live as independently as possible in their own homes or communities and to achieve productive lives as close to normal as possible.

(2) All programs of services and treatment for clients shall be administered through the districts and shall serve all clients regardless of the type of residential setting in which the client lives. In addition, all purchased services shall be approved by the district.

(3) All services needed shall be

purchased instead of provided directly by the department, when such arrangement is most cost-efficient, in accordance with s. 20.19(14).

(4) Community-based services shall, to the extent of available resources, include:

- (a) Day care services.
- (b) Respite care services.
- (c) Medical care services.
- (d) Recreation.
- (e) Physical therapy.
- (f) Training, including developmental training.
- (g) Social services.
- (h) Parent training.
- (i) Other habilitative and rehabilitative services as needed.

(5) The department shall utilize the services of private businesses, not-for-profit organizations, and units of local government whenever such services are more cost-efficient than providing such services directly by the department, including arrangements for provision of residential facilities.

(6) In order to improve the potential for utilization of more cost-effective, community-based residential facilities, the department shall promote the statewide development of day care services for clients who have a regular place of domicile and who do not require 24-hours-a-day care in a hospital or other health care institution, but who may, in the absence of day care services, require admission to a Sunland Center. Each day care service facility shall provide a protective physical environment for clients, make available to all day care service participants at least one meal on each day of operation,

provide facilities to enable participants to obtain needed rest while attending the program, and provide social and educational activities designed to stimulate interest and provide socialization skills.

(7) For the purpose of making needed community-based residential facilities available at the least possible cost to the state, the department is authorized to lease privately owned residential facilities under long-term rental agreements, if such rental agreements are projected to be less costly to the state over the useful life of the facility than state purchase or state construction of such a facility. In addition, the department is authorized to permit, on any public land to which the department holds the lease, construction of a residential facility for which the department has entered into a long-term rental agreement as specified in this subsection.

393.13 Personal treatment of clients. -

(1) **SHORT TITLE.** - This act shall be known as "The Bill of Rights of Retarded Persons."

(2) LEGISLATIVE INTENT. -

(a) The Legislature finds and declares that the system of care which the state provides to mentally retarded individuals must be designed to meet the needs of the clients as well as protect the integrity of their legal and human rights. Further, the current system of care for retarded persons is in need of substantial improvement in order to provide truly

meaningful treatment and habilitation.

(b) The Legislature further finds and declares that the design and delivery of treatment and services to the mentally retarded should be directed by the principles of normalization and therefore should:

1. Abate the use of large institutions.

2. Continue the development of community-based services which provide reasonable alternatives to institutionalization in settings that are least restrictive to the client.

3. Provide training and education to mentally retarded individuals which will maximize their potential to lead independent and productive lives and which will afford opportunities for outward mobility from institutions.

(c) It is the intent of the Legislature that duplicative and unnecessary administrative procedures and practices shall be eliminated, and areas of responsibility shall be clearly defined and consolidated in order to economically utilize present resources. Furthermore, personnel providing services should be sufficiently qualified and experienced to meet the needs of the clients, and they must be sufficient in number to provide treatment in a manner which is beneficial to the clients.

(d) It is the intent of the Legislature:

1. To articulate the existing legal and human rights of the retarded so that they may be exercised and protected. The mentally retarded person shall have all the rights enjoyed by citizens of the state and the United States.

2. To provide a mechanism for

the identification, evaluation, and treatment of persons with mental retardation.

3. To divert those individuals from institutional commitment who, by virtue of professional diagnosis and evaluation, can be placed in less costly, more effective community environments and programs.

4. To mandate the development of a plan which will indicate the most effective and efficient manner meaningful to individuals with mental retardation, while safeguarding and respecting the legal and human rights of such individuals.

5. Once the plan mandated under the provisions of subparagraph 4. is presented to the Legislature, to fund improvements in the program in accordance with the availability of state resources and yearly priorities determined by the Legislature.

6. To provide programs for the proper habilitation and treatment of the mentally retarded person, which shall include, but not be limited to, comprehensive medical care, education, recreation, physical therapy, training, social services, and habilitative and rehabilitative services suited to the needs of the individual regardless of age, degree of retardation, or handicapping condition. No mentally retarded person shall be deprived of these enumerated services by reason of inability to pay.

7. To fully effectuate the normalization principle through the establishment of community services for the mentally retarded person as a viable and practical alternative to institutional care at each stage of individual life development. If care in an institutional facility

becomes necessary, it should be in the least restrictive setting.

(e) It is the clear, unequivocal intent of this act to guarantee individual dignity, liberty, pursuit of happiness, and protection of the civil and legal rights of mentally retarded persons.

(3) CLIENT RIGHTS. -

(a) Clients shall have a right to dignity, privacy, and humane care.

(b) Clients shall have the right to religious freedom and practice. Nothing shall restrict or force infringement on a client's right to religious preference and practice.

(c) Clients shall have an unrestricted right to communication:

1. Each client shall be allowed to receive, send, and mail sealed, unopened correspondence. No client's incoming or outgoing correspondence shall be opened, delayed, held or censored by the facility unless there is reason to believe that it contains items or substances which may be harmful to the client or others, in which case the chief administrator of the facility may direct reasonable examination of such mail and regulate the disposition of such items or substances.

2. Clients in residential facilities shall be afforded reasonable opportunities for telephone communication.

3. Clients shall have an unrestricted right to visitations. However, nothing in this provision shall be construed to permit infringement upon other clients'

rights to privacy.

(d) Each client has the right to the possession and use of his own clothing and personal effects. The chief administrator of the facility may take temporary custody of such effects when it is essential to do so for medical or safety reasons. Custody of such personal effects shall be promptly recorded in the client's record, and a receipt for such effects shall be immediately given to the client, if competent, or his parent or legal guardian.

1. All money belonging to a client held by the department shall be held in compliance with s. 402.17(2) and (7).

2. All interest on money received and held for the personal use and benefit of a client shall be the property of that client and shall not accrue to the general welfare of all clients or be used to defray the cost of residential care. Interest so accrued shall be used or conserved for the personal use or benefit of the individual client as provided in s. 402.17(2).

3. Upon the discharge or death of a client, a final accounting shall be made of all personal effects and money belonging to the client held by the department. All such personal effects and money, including interest, shall be promptly turned over to the client or his heirs.

(e) Each client shall receive education and training services regardless of chronological age, degree of retardation or accompanying disabilities or handicaps. Clients may be provided with instruction in sex education, marriage, and family planning as prescribed in the client's individual habilitative program.

(f) Each client shall receive prompt and appropriate medical treatment and care for physical and mental ailments and for the prevention of any illness or disability. Medical treatment shall be consistent with the accepted standards of medical practice in the community.

1. Medication shall be administered only at the written order of a physician. Medication shall not be used as punishment, for the convenience of staff, as a substitute for a habilitation plan, or in unnecessary or excessive quantities.

2. Daily notation of medication received by each client in a residential facility shall be kept in the client's record.

3. Periodically, but no less frequently than every 6 months, the drug regimen of each client in a residential facility shall be reviewed by the attending physician or other appropriate monitoring body, consistent with appropriate standards of medical practice. All prescriptions shall have a termination date.

4. Pharmacy services at each residential facility shall be directed or supervised by a professionally competent pharmacist licensed according to the provisions of chapter 465.

5. Pharmacy services shall be delivered in accordance with the provisions of chapter 465.

6. Prior to instituting a plan of experimental medical treatment or carrying out any necessary surgical procedure, express and informed consent shall be obtained from the client, if competent, or his parent or legal guardian. Information upon which the client shall make necessary treatment and surgery decisions shall include, but not be limited to:

a. The nature and consequences of such procedures.

b. The risks, benefits, and purposes of such procedures.

c. Alternate procedures available.

7. When the department is the legal guardian of a client, or the custodian of a client whose parent or legal guardian is unknown or unlocatable and whose physician is unwilling to perform surgery based solely on the client's consent, a court of competent jurisdiction shall hold a hearing to determine the appropriateness of the surgical procedure. The client shall be physically present, unless the client's medical condition precludes such presence, represented by counsel, and provided the right and opportunity to be confronted with, and to cross-examine, all witnesses alleging the appropriateness of such procedure. In such proceedings, the burden of proof by clear and convincing evidence shall be on the party alleging the appropriateness of such procedures. The express and informed consent of a person described in subparagraph 6. may be withdrawn at any time, with or without cause, prior to treatment or surgery.

8. The absence of express and informed consent notwithstanding, a licensed and qualified physician may render emergency medical care or treatment to any client who has been injured or who is suffering from an acute illness, disease, or condition if, within a reasonable degree of medical certainty, delay in initiation of emergency medical care or treatment would endanger the health of the client.

(g) Clients shall be provided with suitable opportunities for behavioral

and leisure time activities which include social interaction.

(h) Each client shall be provided with appropriate physical exercise as prescribed in the client's individual habilitation plan. Indoor and outdoor facilities and equipment for such physical exercise shall be provided.

(i) Each client shall receive humane discipline.

(j) No client shall be subjected to a treatment program to eliminate bizarre or unusual behaviors without first being examined by a physician to rule out the possibility that such behaviors are organically caused.

1. Treatment programs involving the use of noxious or painful stimuli shall be prohibited.

2. All alleged violations of this paragraph shall be reported immediately to the chief administrative officer of the facility or the district administrator, the department head, and the district human rights advocacy committee. A thorough investigation of each incident shall be conducted and a written report of the finding and results of such investigation shall be submitted to the chief administrative officer of the facility or the district administrator and to the department head within 24 hours of the occurrence or discovery of the incident.

(k) Each client engaged in work programs which require compliance with federal wage and hour laws shall be provided with minimum wage protec-

tion and fair compensation for labor in accordance with the provisions of 29 C.F.R. part 529.

(l) Clients shall have the right to be free from physical restraint. Physical restraints shall be employed only in emergencies to protect the client from imminent injury to himself or others. Restraints shall not be employed as punishment, for the convenience of staff, or as a substitute for a habilitative plan. Restraints shall impose the least possible restrictions consistent with their purpose and shall be removed when the emergency ends. Restraints shall not cause physical injury to the client and shall be designed to allow the greatest possible comfort.

1. Mechanical supports used in normative situations to achieve proper body position and balance shall not be considered restraints, but shall be prescriptively designed and applied under the supervision of a qualified professional with concern for principles of good body alignment, circulation, and allowance for change of position.

2. Totally enclosed cribs and barred enclosures shall be considered restraints.

3. Daily reports on the employment of restraints by those specialists authorized in the use of restraints shall be made to the appropriate chief administrator of the facility, and a monthly summary of such reports shall be relayed to the district administrator and the district human rights advocacy committee. The reports shall summarize all such cases of restraints, the type used, the duration of usage, and the reasons therefor.

4. The department shall post a

copy of the rules and regulations promulgated under this section in each living unit of residential facilities. A copy of the rules and regulations promulgated under this section shall be given to all staff members of residential facilities and made a part of all preservice and inservice training programs.

(m) 1. Each client shall have a central record. The record shall include data pertaining to admission and such other information as may be required under regulation by the department.

2. Unless waived by the client, if competent, or his parent or legal guardian if the client is incompetent, the client's central record shall be confidential. The client's central record shall not be a public record, and no part of it shall be released except:

a. The record may be released to physicians, attorneys, and government agencies having need of the record to aid the client, as designated by the client, if competent, or his parent or legal guardian, if the client is incompetent.

b. The record shall be produced in response to a subpoena or released to persons authorized by order of court, excluding matters privileged by other provisions of law.

c. The record or any part thereof may be disclosed to a qualified researcher, a staff member of the facility, or an employee of the department when the administrator of the facility or the secretary of the department deems it necessary for the treatment of the client, maintenance of adequate records, compilation of treatment data, or evaluation of programs.

d. Information from the records may be used for statistical and research purposes if the information is abstracted in such a way to protect the identity of individuals.

3. All central records for each client in residential facilities shall be kept on uniform forms distributed by the department. The central record shall accurately summarize each client's history and present condition.

4. The client, if competent, or his parent or legal guardian if the client is incompetent, shall be supplied with a copy of the client's central record upon request.

(4) **LIABILITY FOR VIOLATIONS.** - Any person who violates or abuses any rights or privileges of clients provided by this act shall be liable for damages as determined by law. Any person who acts in good-faith compliance with the provisions of this act shall be immune from civil or criminal liability for actions in connection with evaluation, admission, rehabilitative programming, education, treatment, or discharge of a client. However, this section shall not relieve any person from liability if such person is guilty of negligence, misfeasance, nonfeasance, or malfeasance.

(5) **NOTICE OF RIGHTS.** - Each client, if competent, or parent or legal guardian of each client if the client is incompetent, shall promptly receive from the Department of Health and Rehabilitative Services a written copy of this act. Each client able to comprehend shall be promptly informed in clear language of the above legal rights of mentally retarded persons.

(6) **RESIDENT GOVERNMENT.** - Each residential facility shall initiate and develop a program of resident government to hear the views and represent the interests of all clients served by the facility. The resident government shall be composed of residents elected by other residents, staff advisors skilled in the administration of community organizations, and a representative of the district human rights advocacy committee. The resident government shall work closely with the district human rights advocacy committee and the district administrator to promote the interests and welfare of all residents in the facility.

Legal Services' Wasteful Involvement in Class Actions

To the Editor:

I have just read your Dec. 5 editorial "More Legal Insults for the Poor," and I am afraid that you have not studied the background for the proposal to ban Legal Services Corporation (L.S.C.) lawyers from class-action cases.

If you had, you would find that such a restriction (1) will eliminate duplication and waste, (2) will actually increase the amount of legal services provided to the poor and (3) will obviate an even stronger ban than the one proposed by L.S.C. Chairman Harvey: a ban adopted by the House of Representatives on June 17, 1981, by an overwhelming vote of 241 to 167 (though rejected by the Senate — the operative law is a continuing resolution).

(1) With the vast expansion of court-awarded fees under the Civil Rights Attorneys Fee Recovery Act and the Equal Access to Justice Act, there is no need for L.S.C. grantees to take time and resources away from solving the individual problems of individual poor people so they can engage in time-consuming class-action litigation.

For example, on Nov. 20, The Times reported that private attorneys received court-awarded fees totaling \$1.71 million for a class action relating to conditions of prisoners — probably the poorest of the poor. Since Legal Services lawyers salaries are 100 percent subsidized by the taxpayer, there is no need for them to engage in class actions which result in large fees. To do so makes the taxpayer pay for the litigation twice. This amounts to institutional ideological ambulance chasing.

(2) Because of the prospect of large fee recoveries, class-action cases divert Legal Services lawyers from providing help for individual poor people. For example, in 1981 the L.S.C. organization in Philadelphia filed in Federal court for \$4.5 million in fees for what is known as the Whitman Park case.

Even at the rate of \$100 per hour, this means that Legal Services lawyers spent 45,000 hours on that one case, or 24 lawyers working full-time for a whole year. The sum of \$4.5 million is equal to two years' worth of grants to this organization from L.S.C. In order to spend that much time on one case, many individual poor people must have been denied legal assistance.

Also in 1981 the L.S.C. grantee Greater Orlando Legal Services had about 4,000 cases, only two of which were class actions. However, The Or-

lando Sentinel-Star reported on Jan. 27, 1981, that "the financial and manpower costs of those two class-action suits . . . are far greater than those of the individual cases." In other words, the organization could handle at least 8,000 individual poor people's cases if the L.S.C. lawyers weren't pursuing just two class actions.

(3) The amendment to the L.S.C. Reauthorization bill, H.R. 3490, adopted by the House in 1981 provides that "no class-action suit may be brought against the Federal Government or any state or local government."

The ban on class actions is sound policy that will save taxpayers money and at the same time increase legal services to the poor.

GARY L. CURRAN
Legislative Consultant
American Life Lobby Inc.
Washington, Dec. 7, 1982



The New York Times Company

229 West 43d St., N.Y. 10036

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January 5, 1983

Editor,
The New York Times Company
229 West 43rd Street
New York, New York 10036

Re: Response to Letter of Gary L. Curran
in December 27, 1982 Times

Dear Editor:

This is truly the era of Trojan horses: opponents to the concept of societal responsibility for the poor try again and again to disguise their attacks on poverty programs in feigned concern about waste and fraud. Mr. Curran (letter to the editor, December 27, 1982) tries to cloak what is simply the old conservative distaste for sharing any wealth with the poor -- in the form of free legal assistance or otherwise -- in pious distress over the "inefficiency" of class-action lawsuits.

Mr. Curran's choice of examples reflects the weakness of his assertion that banning poverty attorneys from handling class-actions would eliminate duplication and waste. The best he could come up with, it seems, is our small program, Greater Orlando Area Legal Services, Inc. ("GOALS") which represents indigents in three predominantly rural counties of Central Florida. The finger is pointed at our only class-action litigation in 1981: two suits concerning gravely unconstitutional conditions in two public facilities, a county jail and a state-run warehouse for the mentally retarded.

Mr. Curran's statements are reminiscent of the old Testament false prophets decrying light as darkness and darkness as light. He purports to believe that if we had not handled these two class action lawsuits, we could have doubled our annual caseload from 4,000 to 8,000 cases.

A look at the facts suggests exactly the opposite. Approximately 800 hours of legal time was spent over a period of 2 years and 3 months to settle the prison suit. Making some basic assumptions, 54 individual cases could have been handled over the same period of time. The prison suit has already benefited 1,500 inmates per month or 40,500 at the time of settlement and will benefit all the poor who pass through the system in the future. Instead of tangibly remedying overcrowded and dangerous jail conditions affecting 40,500 inmates over the 27 month period, Mr. Curran suggests we should have provided assistance with little lasting effect to a total of 54 individuals. This is what Mr. Curran would call efficiency?

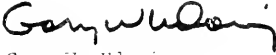
The second class-action suit handled by our Legal Services program was brought on behalf of hundreds of severely and profoundly retarded citizens in a local institution that had a very poor reputation for abuse and neglect over the past ten years. The case took approximately 3 years to complete, benefiting not only the 700 patients at the facility but other similar institutions throughout the state. Through one class-action on behalf of our most vulnerable citizens, an institution with a history of being a fire trap, understaffed, and a host of other problems, has been closed by a federal court order transferring the patients to smaller community-based facilities where they will receive better care and attention in all aspects.

Mr. Curran is also misinformed or dishonest about the willingness of the private bar to handle class-actions for the poor. He implies that Legal Services attorneys are wasting federal funds on cases that the private sector would gladly accommodate. Mr. Curran's case in point, GOALS and its two class-action lawsuits, belies his message. In fact, extensive efforts were made to secure private counsel for both of these suits. GOALS took on the jail conditions lawsuit at the direct request of the President of the local bar association. From its membership of 1,200 private attorneys, the bar association was unable to produce even one volunteer to represent the indigent inmates. Instead, our Legal Services Program, with a staff of 7 lawyers, was recruited for the job.


The idea of banning class-actions (which is included in H.R. 3480, the bill reauthorizing Legal Services) makes no

sense, not only in the GOALS example, but in general. The overwhelming evidence, if one bothers to look, demonstrates that the class-action brought against large-scale violators of poor peoples' rights is an effective and cost-efficient method of delivering legal services and remedying long term, systemic wrongs against the poor. To deny advocates for the poor use of the class-action (a device established by court rules of procedure) is to scorn the principle upon which our justice system is based: "equal justice under law".

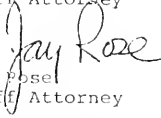
Yours truly,



Gary W. Udouj
Executive Director



Melanie Malherbe
Staff Attorney



Jay Posel
Staff Attorney

Greater Orlando Area Legal
Services, Inc.

CHRONOLOGY OF EVENTS
NEW JERSEY COMPLAINTS

1. July, 1980 - GSA sues Camden Regional Legal Services in New Jersey State Supreme Court saying CRLS tortiously interfered with business and contractual relations; instigated a strike in violation of LSC Act.
2. July, 1980 - GSA withdraws action against CRLS in State Court within 10 days of filing.
3. August, 1980 - Farmworkers sue Glassboro Service Association (GSA) for violation of Wagner-Peyser Act, 29 U.S.C. §49-49K. GSA sent workers to a farm where a strike was in progress. 20 CFR §604.1(i)
4. December, 1980 - GSA attorneys file complaint with LSC Regional Office against CRLS.
5. February, 1981 - LSC finds no violation.
6. February, 1981 - GSA attorney submits additional evidence to LSC R.O.; R.O. investigates.
7. March 18, 1981 - GSA asks District Court for leave to file counterclaim against CRLS; District Court doesn't rule on Motion for Leave to file counterclaim which alleges CRLS tortiously interfered with business and contractual relations; instigated a strike in violation of LSC Act (same charges filed and withdrawn in state court).
8. March 19, 1981 - GSA Attorney, Cureton, notifies plaintiff and judge of intent to testify before house sub-committee on LSC - to testify about matters contained in pleadings on counter-claim.
9. March 19, 1981 - Plaintiff's attorneys say they object to testimony about pending litigation.
 - Judge does not yet grant leave to file counterclaim.
 - Judge says he will discuss testimony in conference call next week.
10. March 20, 1981 - Judge schedules hearing on testimony for March 24th.
11. March 23, 1981 - GSA files Motion for Preliminary Injunction against CRLS - who at this point are only proposed counter-defendants.
 - No counter-defendants have been served to date.
12. March 24, 1981 - Judge hears argument.
 - Plaintiffs: move to strike proposed counterclaim and motion for preliminary injunction.
 - FRCP 11 & 12: scandalous
 - Object to testimony because it will prejudice plaintiffs and abuse judicial system.

13. March 24, 1981 - Judge issues order prohibiting only defendant GSA's attorney from testifying and only prohibits testimony about pending litigation; GSA free to testify.
14. March 24, 1981 - GSA's attorney appeals order of Magistrate to U.S. District Court Judge Stanley Brotman.
15. March 24, 1981 - Brotman denies appeal and says "I do not consider Judge Hammill's determination a gag order. As to any other matter, not the subject matter or issue or issues in the instant litigation, counsel is certainly free to participate" (in hearing before Sub-Committee).
 - affirms order the Cureton cannot testify re pending litigation.
 - Brotman notes that plaintiffs' attorneys have stated they do not object to any matter respecting their alleged impropriety in the litigation being aired before LSC.
16. March 24, 1981 - Defendant's attorney appeals Judge Brotman's order to Judge Hunter, U.S. Court of Appeals for the Third Circuit.
 - Judge Hunter denies appeal; finding no jurisdiction for appeal.
17. March 25, 1981 - Cureton testifies before Sub-Committee about general improprieties.
 - Other Farm Bureau witnesses submit written statements and testify about alleged improprieties of CRLS; written from both GSA and another attorney for GSA.
 - Chairman Kastenmeier tells Cureton he's free to submit testimony anytime court allows.
18. April 3, 1981 - Judge Hammill hears Motion for Leave to amend pleadings to add counter-claim:
 - allows for tortious interfluence with business and contractual relations
 - denies for allegation of violation of LSC Act (court has no jurisdiction)
19. April 9, 1981 - Three judge panel of the Third Circuit grants defendants a stay of Judge Brotman's March 25th order.
 - "Chief Judge Seitz would deny the motion" says order.

20. April 15, 1981 - Defendant's attorney, Cureton, submitted testimony to Committee.
21. May 4, 1981 - Defendant's attorney, Cureton, sends Judge Brotman a letter withdrawing Motion for Preliminary Injunction stating:

"...the conduct complained of has not recurred, nor is the undersigned (Cureton) aware of any threats which have occurred since the filing of the motion."

Following stay by Third Circuit, Cureton submitted written testimony to Kastenmeier's committee and CRLS submitted a written response.

CAMDEN REGIONAL LEGAL SERVICES, INC.
FARM WORKER DIVISION
631 WOOD STREET
VINELAND, NEW JERSEY 08360
PHONE (609) 681-4500

November 10, 1982

Robert Kastenmeier, Chairman
Subcommittee on Court, Civil Liberties
and the Administration of Justice
U.S. House of Representatives
Washington, D.C.

Dear Representative Kastenmeier:

I want to bring you up to date on the various charges which were made against the Farmworker Division of Camden Regional Legal Services.

As you know, in the summer of 1980 we provided legal representation to a group of migrant farmworkers who initially were fired for exercising the right to organize. We obtained a court order for the reinstatement of the workers under New Jersey law. The farmer and his labor contractor, Sunny Slope Farms and Glassboro Service Association, respectively, responded with a suit against our program for interference with their "contracts" with each individual worker. New Jersey Superior Court cases Nos. C-4631-79E and C-4632-79E (Cumberland County).

A month later the migrant farmworkers went on strike against Sunny Slope Farms. We again represented the migrant farmworkers and when the labor contractor attempted to put new workers into the labor camp in ways which violated both state and federal law, we filed suit on behalf of both the workers on strike and the new group of workers. El Comite v. Sunny Slope Farms, U.S. District Court for New Jersey, No. 80-2682.

Sunny Slope Farms and Glassboro Service Association, defendants, again responded by attacking our staff and program. A third party complaint was filed against staff members and Camden Regional Legal Services alleging that Camden Regional Legal Services had organized the strike and damaged their business.

Attorneys for the defendants also filed complaints against Camden Regional Legal Services with the Legal Services Corporation Philadelphia Regional Office and submitted testimony to your committee. The testimony made various charges about Camden Regional Legal Services's conduct during the strike, including some not so subtle implications that Camden Regional Legal Services's staff may have been involved in the burning of a farm labor contractor's bus.

None of these charges have ever been in any way substantiated or supported since that time. The complaint filed with the Philadelphia Regional Office of the Legal Services Corporation was investigated and dismissed as totally unfounded. Our own investigation of the alleged bus burning established that, contrary to statements made in court by the defendant's attorney, there was not even a police report of such an incident. The suits in the New Jersey Superior Court have now all been dismissed on the stipulation of the parties and the federal court case, El Comite v. Sunny Slope has been settled with the complete dismissal of all counterclaims and third party claims against Legal Services and dismissal of the original complaint upon the payment of \$1,000 to the migrant farmworker plaintiffs.

Glassboro Service Association has also filed numerous complaints with your committee charging that the migrant programs of Camden Regional Legal Services and Puerto Rico Legal Services were harrasing Glassboro with numerous frivolous complaints for small claims on behalf of individual farmworkers.

We, too, have recognized the problems involved in litigating numerous individual complaints against a single corporate defendant, particularly when that defendant refuses to settle cases without litigation and that defendant has been found by a U.S. District Court to have blacklisted those farmworkers who did pursue complaints. Horrach v. Quiros, Puerto Rico District Court No. 77-752.

Thus, in 1978, we filed a class action on behalf of all migrant farmworkers who worked for Glassboro Service Association during that year for damages for violations of the Farm Labor Contractor Registration Act, 7 U.S.C. Sec. 2041 et. seq. The New Jersey Farm Bureau was later added as a defendant when it was discovered to be the parent corporation which totally owned and controlled Glassboro Service Association.

That case, Pacheco v. New Jersey Farm Bureau, U.S. District Court for New Jersey No. 2763, went to trial in October, 1981, and was settled after two and one-half weeks of presentation of the plaintiffs' case. The settlement calls for Glassboro Service Association to pay \$130,000 over three years, including \$7,500 to the named plaintiffs, \$30,000 to Camden Regional Legal Services for the expenses of the litigation and \$92,500 which is to be distributed among the class members. The settlement order also includes extensive injunctive relief requiring Glassboro Service Association to comply with the provisions of the Farm Labor Contractor Registration Act and injunctive relief prohibiting the New Jersey Farm Bureau from engaging in farm labor contractor activities without first registering and complying with the Farm Labor Contractor Registration Act.

The results in these cases and the payment of substantial monetary damages to migrant farmworker plaintiffs, confirm the merits of the original claims and our programs decision to represent them. I believe

these results also demonstrate the political nature of the numerous charges against the migrant programs of Camden Regional Legal Services and Puerto Rico Legal Services and confirm my original belief that the charges were only attempts to prevent us from properly and successfully representing our clients.

Unfortunately, it takes much longer to vindicate the rights of our clients through litigation than it does to make such broad attacks on Legal Services before your committee. I hope that the results we have achieved in this case will help keep such issues in their proper perspective in the future and provide a factual basis for the continued support of Legal Services.

Sincerely yours,

Michael W.L. McCrory

MICHAEL W.L. MCCRORY

NWLM/jlg

LEGAL SERVICES CORPORATION

MEMORANDUM

DATE: January 19, 1979

TO: All Regional Officers

FROM: Clint Lyons

SUBJECT: Procedures for Handling Real Estate Purchases by Grantees

A uniform written procedure is necessary for the handling of real estate purchases by grantees because such purchases have become commonplace and confusion currently surrounds their operation. Because the Regional Office is in the position of being most aware of a program's needs, situation, and financial condition, in the future the approval decision for these transactions shall rest with the Regional Director.

I have attached a memorandum put together by an Alabama program which gives a thoughtful analysis of the benefits and disadvantages of purchasing versus renting. I urge R.O. staff to make this available to programs considering such options. (Exhibit A)

Programs planning on purchasing property shall submit the following to their Regional Office in a timely manner:

- (1) Written memorandum addressing the nine factors set forth in Charles Jones' memorandum of November 17, 1976 (attached as Exhibit B).
- (2) An appraisal of the property under consideration.
- (3) Copy of Board of Director's Resolution approving purchase.
- (4) Memorandum of state law on method by which LSC may retain control over subsequent transfer of property.
- (5) Copy of the purchase agreement.

The Regional Office shall review the materials submitted in light of the Jones memo. Programs retain the responsibility for reviewing their purchase contract, deed, etc. from a legal stand point. Programs should be encouraged to retain counsel and should be informed that LSC will not assume any responsibility for this kind of legal analysis and review. Special attention should be given to the way in which the grantee anticipates giving LSC control over future transfer of the property. LSC requires the program to notify and obtain written approval from the Corporation (R.O.) prior to any sale, transfer or encumbrance of the property. If such a condition is unlawful as a restraint on alienation in a particular state (e.g. California), a clause in which the program agrees not to

expend the funds from such a transaction without prior written approval of LSC will be required in its place. Examples of such clauses are attached hereto. (Exhibit C) The Regional Director shall then grant or deny approval to the grantee, attaching such additional requirements as seen fit. Approval should be in writing with a copy (of the approval only) to OFS.

Steve Walters has indicated that in those non-routine instances involving legal questions about LSC control, such as purchase of property with LSC and non-LSC funds, or enforceability of control provisions, etc., he will remain available to assist in working out these arrangements.

cc: Steve Walters

REAL ESTATE APPRAISERS

TELEPHONE

September 30, 1977

Mr. Marvin H. Campbell
Executive Director
Legal Services Corporation of Alabama, Inc.
Suite 1526 - 121 Building
Birmingham, Ala. 35203

Dear Mr. Campbell:

From our telephone conversation of September 22, 1977 and your letter of the same day, I understand that you are thinking about acquiring office space here in Montgomery, and that the two buildings you are primarily considering are the Building and the Building, both of which are on Street. You have employed me to advise you since you are undecided as to whether or not it would be to your best financial advantage to rent or buy.

In gathering data, I talked to many property managers who gave me the information necessary for this study. Unfortunately, because they requested that this information be kept confidential, I am unable to give you the names and addresses of the buildings that were used in making the conclusions that follow. However, here is a summary of the properties that were given primary consideration in this study.

EXHIBIT A

No. of Buildings - 8

Type - All office

Neighborhood - All in the same neighborhood and within 3 blocks of the subject properties.

Age - Varying from 1965 to 1977, most were built after 1970.

No. of Stories - Both 1 and 2; one was 5 stories.

Gross Area - From 8200 sq. ft. to 45,000 sq. ft. Total 138,834 sq. ft.

Net Rentable Area - This varies from a low of 72% to a high of 87%, with an average of about 80%.

Rents - From July to September of 1977. From \$5.90 a sq. ft. to \$6.50 a sq. ft. of rentable area.

Occupancy - From 92% - 100%, averaging about 95%.

Rental Increase - Here I studied some buildings outside of the 8 mentioned above and was able to get some fairly old rents as compared with current rents in the same building. All of the buildings showed a steady increase after the period studied but generally rentals appeared to be running at about an 8% per year increase.

From the above data, I reached the conclusions listed below. I should point out here, however, that I have not studied the subject buildings in sufficient depth to be sure that they are specifically comparable and applicable to the buildings you are considering. But I do think my conclusions are reasonably close to what we could expect in the two subject buildings. These conclusions follow.

Rent per sq. ft. of Net Rentable Area per year - \$6.25

Ratio of Net Rentable Area to Gross Area - 71%

Gross Area - 10,000 sq. ft.

Gross Rent per year - \$6.25 per sq. ft. x .71 x 10,500 sq. ft. = \$46,594;

The actual expenses of several buildings were available to me and the following expenses have been deduced as a result. I believe that the annual expenses in the subject buildings could thus be approximated.

Expenses per Sq. Ft. per Year

Insurance	.03
Taxes	.25
Supplies	.08
Utilities	.90
Exterminator	.01
Janitor	.40
Yard	.09
Rep. & Maint.	.09
	<u>1.85</u>
	10,500
	<u>19,425</u>

Vacancy and Rent Loss

In an ordinary appraisal, an allowance is made from the gross annual income for loss incurred by vacancies or non-collection of rent, but since the purpose of this study is for you to look at your own cost of occupancy, I have projected this over a period of 10 years, have assumed that you would occupy the property all of that time, and, therefore, I have made no allowance for vacancy and rent loss.

Financing

If you purchase a property, I have assumed that you would follow the ordinary business practice of putting a maximum mortgage on the property, and I think that either of the properties you are considering could be financed with a loan based on 75% of the market value of the property, amortized and monthly installments over a period of 25 years, and bearing interest at 9 1/2%. This is not to imply that I have concluded the property is worth \$400,000, but that appears to be the price currently under negotiation, and I did need some figure from which to derive a debt service. Such financing would require a mortgage payment of \$2,621.09 per month, or \$31,453.08 per year.

Appreciation

We are next faced with making a judgment as to whether the property will be worth more or less ten years from now. To form this judgment, I gave consideration to what has been happening within the neighborhood over the past ten years. There has been a great deal of activity in office buildings, probably more than in all the rest of the city of Montgomery. These buildings have reached an occupancy of between 92% and 100%. Ten years ago a 50-foot lot could be purchased for around ten to twelve to thirteen thousand dollars. Today they bring more nearly around \$25,000.

The history of rents in the neighborhood has shown a steady increase and, incidentally, the factor to adjust for the purchasing power of the dollar nearly parallels 8% - indicated by the increased rents in the area. So, I have figured the subject property would increase at 8% per year. However, about 85% of the value of the property would be in the building and there is always physical deterioration. Therefore, we estimate the building as depreciating at $2\frac{1}{2}\%$ per year for 85% of the property. This would indicate a downward adjustment of .0213 to be charged against the increase of 8%, leaving a net increase of .0588% per year. This net increase would indicate the value at the end of 10 years to be:

$$\$400,000 \times 1.77 = \$707,936$$

If the building were sold at the end of this period, there would be a sales expense which we have estimated at 15%, leaving a net sale price of \$601,746. During the ten-year period, however, the mortgage balance would have been reduced, so I would estimate a reasonable judgment on the sale at the end of the ten-year period to be:

$\$400,000 \times 1.77 =$	\$707,936	
Less Sales Expense 15%	=	106,190
Less Mortgage Balance	=	250,827 (300,000 x .83609)
Equity (end of 10 yrs.)		350,919

Projection Period

I realize that your organization is a non-profit one and tax advantages or disadvantages are of no interest to you. However, you are making a business judgment and I would assume that your thinking would, at least in some areas, parallel good business practice. Many investors in this type property consider holding it for about ten years, then disposing of the property at the end of that time. Income tax does have something to do with that decision, but there are other decisions. One is that by this time property has generally increased in value, the mortgage has decreased, and they realize that there is a great deal of working capital tied up in a property and that they can convert this to working capital by either selling or completely refinancing the property. So, in either case it really becomes a different financial entity, and I have used this ten-year projection for your comparison.

1	2	3	4	5	6
Year	Rent	(Expense	+ Debt Service) =	Advantage Discounting	Discounting 15%
1	\$ 46,594.	\$ (19,425	+ 31,453.08)	\$ - 4,284.08	\$ - 3,725.29
2	50,321.52	20,979		- 2,110.56	- 1,595.89
3	54,347.24	22,657.32		236.84	+ 155.73
4	58,695.02	24,469.91		2,772.04	1,584.92
5	63,390.62	26,427.50		5,510.04	2,739.47
6	68,461.87	28,541.90		8,467.09	3,660.55
7	73,938.82	38,825.00		11,660.71	4,383.69
8	79,853.92	33,291.04		15,109.81	4,939.42
9	86,242.24	35,954.32		18,834.84	5,354.04
10	93,141.62	38,830.66		22,859.88	5,650.12
		P.W. Discounts at 15% per year.....		107,096.53	23,146.77
		P.W. of Reversion 350,918 x 2472.....		350,918	86,746.93
				458,014.53	109,893.70
		Less Equity Investment.....		100,000	100,000
			Advantage.....	\$ 358,014.53	\$ 9,893.70

$$25 \text{ Year Mortgage } 9 \frac{1}{2}\% = 300,000 = 2621.09 \times 12 = 31,453.08$$

Column 1 identifies the year forecast. The second column represents what I think would be the market rent. Notice that I have increased this 8% per year of your occupancy. Columns 3 and 4 represent costs to you as owner of the subject property. In Column 3 are the expenses I think you would likely incur and, in my judgment, these expenses would increase periodically at approximately the same rate the rent would increase - 8%.

Debt service (Column 4) would, of course, remain constant throughout your ownership until the entire debt was paid.

Column 5 represents the annual advantage or disadvantage in dollars derived by you for ownership.

Column 6 is the discounted value today of Col. 5 based on the compound interest premise that money due in the future is worth less than cash in hand today, or on the other side, money that you don't owe for a year is less of a liability than money you owe today. I have used 15% in this column because that is about what it takes to attract risk capital in this type market today.

Several observations should be made here. In Column 5 it can be seen that for a short-term occupancy, the advantage lies with leasing. It can be seen that the annual expense for the first two years, the owning is greater. But because of the fact that a major part of your ownership expense is debt service which is constant that by the end of the third year, the expense of ownership is less than that of leasing. This increases substantially each year until at the end of the ten-year period there becomes about a \$23,000 advantage in owning.

meaning that was a \$100,000 investment. We see that the total of Column 6, the present worth of all of these income streams discounted at 15% comes to about \$23,000 at the end of a ten-year period. We have made a judgment that the building can be sold, yielding an equity at that time of about \$350,000. Discounting this again at the 8% per year, it would mean that \$350,000 would have present worth today of only about \$87,000. These would indicate justifying about a \$110,000 investment, showing a net yield or internal rate of return of a little of over 15% on the \$100,000 investment. This is about the rate acceptable in the market today.

Just as an item of possible interest, I have totaled column 5 indicating an advantage to the owner of about \$358,000. This is not a realistic way and certainly no knowledgeable investor would give it any weight.

TABLE 2

1 Year	2 Rent	3 - (Expense	4 + Debt, Service)	5 Advantage Discounting	15% Discount
1	46,594	-(19,425	48,669.69)	- 21,500.69	- 18,696.25
2	50,321.52	20,979		- 19,327.17	- 14,614.12
3	54,347.24	22,657.32		- 16,979.77	- 11,164.47
4	58,695.02	24,469.91		- 14,444.57	- 8,258.71
5	63,390.62	26,427.50		- 11,706.56	- 5,820.2
6	68,461.87	28,541.90		- 8,749.52	- 3,782.6
7	73,938.82	38,528.00		- 5,555.90	- 2,088.6
8	79,853.92	33,291.04		- 2,106.80	688.7
9	86,242.24	35,954.32		1,618.23	460.0
10	93,141.62	38,830.66		5,641.27	1,394.4
			P.W. Discounted 15%.....		63,259.4
	**	-P.W. of Reversion .2472 x 2		350,918	86,746.9
				Advantage	23,487.5

Table 2 is quite similar to Table 1 except I have assumed a different arrangement on the financing. Here I have assumed that there would still be the first mortgage exactly as was shown in Table 1, but that in addition to this the entire \$100,000 equity would be borrowed on a second mortgage payable at 12% per year and amortized over the entire ten-year period. I doubt seriously that such financing would be available either to you or in the ordinary world of business, but then I thought that such an analysis might give you a clearer picture of the advantage or disadvantage.

** This now would assume that no cash would be invested. The annual expense of ownership each year would be greater up until the ninth year, but in the end, the advantage of some \$23,500 would even be greater than in Table 1.

1 Year	2 Rent	3 (Expense	4 TABLE 3 Debt Service)	5 Advantage Discounting	6 Discount 15%
1	46,954	-(19,425	37,350.53)	- 10,182	- 8,854
2	50,321.52	20,979		- 8,008	- 6,055
3	54,347.24	22,657.32		- 5,661	- 3,722
4	58,695.02	24,469.91		- 3,125	- 1,787
5	63,390.62	26,427.50		- 387	- 193
6	68,461.87	28,541.90		2,570	1,111
7	73,938.82	38,825.00		5,763	2,167
8	79,853.92	33,291.04		9,212	3,012
9	86,242.24	35,954.32		12,932	3,678
10	93,141.62	38,830.66		16,960	4,912
				+ 20,074	- 6,451
		P.W. of Reversion (.2472).....		416,743	103,012
					96,561

Assume Purchase Price of \$475,000
All else the same as in Table No. 2

In our several conversations you have indicated that the owners in the negotiations raised the price from \$400,000 to \$475,000, so that I thought you might very well appreciate a look at the investment on a \$475,000 purchase price. Here you can see that the total present worth of the income stream discounted and the present worth of the reversion comes to a little under \$100,000, meaning that the investment is yielding something less than 15%, although this is certainly not as good an investment as the \$400,000, but even at this it appears to be fairly good. Once again it should be pointed out that the projection in Table 3 is based on the conclusion or assumption that the property would still increase some 76% in value over the ten year projection period.

In conclusion, I think that if you plan to occupy the building for ten years, the advantage is definitely in owning the building rather than renting it, and the longer that you own, the greater will be the advantage.

Finally, I think that I should point out that the forecasts and estimates in the various tables have carried things out to 2 decimal points. The reason for this was that I made a computer program, and these are what the computer gave me. Also, I expect this letter will be reviewed by accountants, and they like to see figures add up exactly. No such accuracy, however, is implied or intended in this letter. Because these are all forecasts and estimates considerable variation in these will likely be encountered in the market.

I have enjoyed doing this study for you. If I have not made some things quite clear, please call me and I shall be delighted to explain.

LEGAL SERVICES CORPORATION

MEMORANDUM

DATE: November 17, 1976

TO: Regional Directors

FROM: Charles Jones

SUBJECT: Purchase of Real Estate by Corporation Grantees

A number of Regional Directors have asked for a statement of Corporation policy governing purchase of real estate by Corporation grantees. Here is a preliminary statement of how the question will be handled. I welcome any suggestions you may have.

A program seeking authorization to purchase real estate should make written application to its Regional Office, accompanied by an appropriate resolution of the program's Board of Directors. The application should be forwarded to the Washington office together with the recommendation of the Regional Director.

The application submitted by a program should address the following factors:

1. The source from which the program expects to obtain funds for a downpayment or for the total purchase price.
2. The monthly cost of ownership should not be greater than the reasonable rental cost of appropriate space for the program. In calculating cost, the program should take into account the monthly mortgage payment (amortization of principal and interest); utility costs, including electricity, gas, water, sewage, trash, etc.; taxes; depreciation; cost of renovation or rehabilitatic and the predicted amortization period for such expenses; insurance; age and life expectancy of the property, including a prediction of how long the space will continue to be large enough, and appropriate, for use by the program.
3. Property must be for use by the program in carrying out legal services, but it may include additional space for rental to others.

5. Real estate purchased by a program may not be disposed of without prior approval of the Corporation, and the manner of disposing of the proceeds of sale shall be determined at the time that such approval is requested.

6. Each program will be responsible for maintaining all necessary records relevant to the purchase and upkeep of property.

7. The application should state how the program intends to create a cash reserve to pay for unusual maintenance or renovation expenses that may occur during its ownership of the property.

8. The application should indicate the reasons for believing that the purchase price of the property represents its fair market value, and should also include a report on the condition of the property and a plan for its utilization.

9. If a program purchases property and rents part of it to others, the rent received from the tenants would be taxable as unrelated business income. Responsibility will rest with each program to determine the tax consequences of its purchase and use of real estate.

10. If a program merges with another program, any real property owned shall be transferred to the successor program.

A G R E E M E N T

THIS AGREEMENT is made and entered into this 10 day August, 1978, by and between the LEGAL SERVICES CORPORATION (hereinafter referred to as the "Corporation") and LEGAL SERVICES OF NASHVILLE AND MIDDLE TENNESSEE, INC. (hereinafter referred to as the "Program").

IN CONSIDERATION of the mutually dependent covenants and agreements herein contained, the Corporation and the Program do hereby agree as follows:

1. The Corporation authorizes the Program to purchase a parcel of real property situated at 650 North Water Street, Gallatin, Sumner County, Tennessee (hereinafter referred to as the "Property"), with funds granted to the Program by the Corporation.
2. In the event that the Program ceases to be a grantee of the Corporation or ceases to exist for any reason whatsoever, the Property shall be transferred to an organization with purposes similar to those of the Program.
3. The Property shall not be sold, transferred, encumbered or in any way disposed of without the prior written approval of the Corporation.
4. The Program shall amend its By-Laws, place appropriate language in its deed to the Property, and take all other steps necessary to insure that the provisions of this Agreement are carried out.
5. This Agreement may be specifically enforced by the Corporation in any Court of competent jurisdiction.

LEGAL SERVICES CORPORATION

By:

Thomas E. G. Smith
Its President

AGREEMENT

The Legal Services Corporation (hereinafter referred to as the Corporation)
and the Peninsula Legal Aid Center, Inc. (hereinafter referred to as the Program)
agree as follows:

1. The Corporation authorizes the Program to use Corporation funds to purchase the real property commonly known as 1214 Kecoughtan Road, Hampton, Virginia (hereinafter referred to as the Property).
2. The Program agrees that it will notify the Corporation prior to any sale, transfer or encumbrance of the Property. Any such sale, transfer, or encumbrance shall be for fair market value and shall comply with the law of Virginia. The Corporation expressly approves the Program's borrowing Thirty-five Thousand Dollars (\$35,000) for purchase of the Property and executing a Deed of Trust to secure the loan.
3. The Program agrees that none of the funds derived from any such sale, transfer, or encumbrance may be expended or used for any purpose without the prior approval of the Corporation.
4. In the event that the Program ceases to exist, disposition of the Property shall be in accordance with the law of Virginia. To the extent permitted by Virginia law, the Program agrees that the property will be transferred to another grantee of the Corporation or, if that is not reasonably possible, to an organization with purposes similar to those of the Program.
5. In the event that the Program ceases to be a grantee of the Corporation, the Property shall be transferred to an organization designated by the Corporation with purposes similar to those of the Program.
6. The Program shall amend its by-laws, place appropriate language in the deed to the Property and take all other steps necessary to ensure that the provisions of this agreement are carried out.
7. This agreement may be enforced by either party in any court of competent jurisdiction.
8. It being understood that the Program is borrowing \$35,000.00 by way of a purchase money deed of trust to provide a portion of the purchase price, it is specifically provided that none of the provisions of this agreement shall in any way affect the lien of the deed of trust, and the right of the Trustee and the holder of the note secured thereby shall be in no wise affected by the terms of this agreement.

PENINSULA LEGAL AID CENTER, INC.

Dated:

June 14, 1978
EXAMPLE: PRIOR APPROVAL TO SELL

By

Robert C. Fenn

AGREEMENT

The Legal Services Corporation (hereinafter referred to as the Corporation) and the Legal Aid Society of Sacramento County, Inc. (hereinafter referred to as the Program) agree as follows:

1. The Corporation authorizes the Program to use Corporation funds to purchase the real property commonly known as 541 Normal Avenue, Chico, California (hereafter referred to as the Property).
2. The Program agrees that it will notify the Corporation prior to any sale, transfer or encumbrance of the Property. Any such sale, transfer, or encumbrance shall be for fair market value and shall comply with the law of California.
3. The Program agrees that none of the funds derived from any such sale, transfer, or encumbrance may be expended or used for any purpose without the prior written approval of the Corporation.
4. In the event that the Program ceases to exist, disposition of the Property shall be in accordance with the law of California. To the extent permitted by California law, the Program agrees that the property will be transferred to another grantee of the Corporation or, if that is not reasonably possible, to an organization with purposes similar to those of the Program.
5. In the event that the Program ceases to be a grantee of the Corporation, the Property shall be transferred to an organization designated by the Corporation with purposes similar to those of the Program.
6. The Program shall amend its by-laws, place appropriate language in the deed to the Property and take all other steps necessary to ensure that the provisions of this agreement are carried out.
7. This agreement may be enforced by either party in any court of competent jurisdiction.

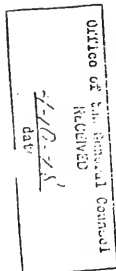
LEGAL AID SOCIETY OF SACRAMENTO COUNTY, INC.

Dated: March 22, 1978 By: [Signature]

LEGAL SERVICES CORPORATION

Dated: 12/12/77 By: [Signature]

EXHIBIT: DISPOSITION OF PROCEEDS



AGREEMENT

The Legal Services Corporation (hereinafter referred to as the Corporation) and the _____

(hereinafter referred to as the Program) agree as follows:

1. The Corporation authorizes the Program to use Corporation funds to purchase the real property commonly known as _____ (hereinafter referred to as the Property).
2. The Program agrees that it will notify the Corporation in writing prior to any sale, transfer or encumbrance of the Property. Any such sale, transfer, or encumbrance shall be for fair market value and shall comply with the law of _____. The Corporation expressly approves the Program's execution of a Deed of Trust to secure a note for the amount of _____.
3. The Program agrees that none of the funds derived from any such sale, transfer, or encumbrance may be expended or used for any purpose without the prior written approval of the Corporation.
4. In the event that the Program ceases to exist, disposition of the Property shall be in accordance with the law of _____. To the extent permitted by _____ law, the Program agrees that the property will be transferred to another grantee of the Corporation or, if that is not reasonably possible, to an organization with purposes similar to those of the Program.
5. In the event that the Program ceases to be a grantee of the Corporation, the Property shall be transferred to an organization designated by the Corporation with purposes similar to those of the Program.
6. The Program shall place appropriate language in the deed to the Property and take all other steps necessary to ensure that the provisions of this agreement are carried out.
7. This agreement may be enforced by either party in any court of competent jurisdiction.
8. None of the provisions of this agreement shall in any way affect the lien of the deed of trust, and the right of the Trustee and the holder of the note secured thereby shall be in no wise affected by the terms of this agreement.

For: _____
(Program Name)

For: Legal Services Corporation

(Name)

(Name)

(Position/Title)

(Position/Title)

(Date)

(Date)

RESPONSE TO SENATOR DENTON'S QUESTIONS

Set forth below are the questions submitted by Senator Denton as appended to the Chairman's letter to me dated May 11, 1983, and my responses to the same.

1. Mr. McCalpin, as Chairman of the Board of Directors of the Legal Services Corporation during 1980-81, you are undoubtedly aware of the allegations of widespread abuse within the Corporation and its grantees. Do you have any comment on these allegations?

As Chairman of the Board of Directors of the Legal Services Corporation and previously I was aware of allegations of abuse within the Corporation and its grantees. Such reports came to me both in my capacity as a director of the Corporation and in my capacity as an officer of the organized bar. To the best of my ability I made sure that all such reports of alleged abuse were transmitted to the appropriate staff of the Corporation and investigated.

In my experience, the vast, overwhelming majority of such reports were inaccurate or unfounded. Some such reported abuses were raised at the hearing on May 4, 1983, and the responses to them are set forth in my letter to Hon. Orrin G. Hatch dated May 19, 1983. In addition, at that hearing Hon. Thomas F. Eagleton produced and entered into the record the report of an investigation into more than 20 of such allegations by the St. Louis Post-Dispatch which concluded that the great majority were without foundation. This reflects my experience.

Almost without exception the investigations of alleged violations of the Legal Services Corporation Act or of regulations adopted by the Corporation revealed that there were no such violations. The same result has been reached in the great majority of lawsuits brought against the Corporation, its officers, directors and grantees. Indeed, it has usually appeared that most accusers were unfamiliar with the provisions of the Act or regulations and were simply acting on the basis of their own biases or preconceived ideas.

It would be remarkable if, in a program involving a corporation with several hundred employees, dispensing nearly \$1 billion to 325 or more grantees employing in the aggregate thousands of persons and serving millions of clients, there were not some transgressions. The astonishing thing is that there have been so few proven violations of the statute or the regulations.

The Act and the regulations in general prescribe only the outer limits of authorized activity. Within those limits lies a large area in which the Board of Directors, officials of the Corporation and grantees may act at their discretion. Such actions are really judgment calls. These have been the focus of a great many allegations of wrongdoing. They do not involve allegations of misconduct so much as charges of errors of judgment. In this respect there is no wrongdoing but only difference of opinion. In evaluating such judgments or opinions it is important to realize that the perceptions of

clients, the needs of clients, who are all poor and many from minority groups, and the responses of legal services programs to those perceptions and needs may be very different from the views of white, middle class and affluent citizens as to the needs of clients of legal services.

In summary, my response is that I am aware of numerous allegations of alleged abuse, that in my experience such allegations are almost always inaccurate or unfounded, that violations of the Act or regulations have been miniscule in a program of this scope and breadth and that the real complaints go to questions of judgment, not legality. In spite of the numerous complaints, I submit that the legal services program has been as well, or better, administered than any governmental program of comparable size and complexity.

2. Mr. McCalpin, in November, 1981, the Corporation put out a publication entitled "Media Access." What in the world does media access have to do with providing routine legal assistance to poor people?

The response to this and the following question requires a background and perspective. Section 1001(2) of the Legal Services Corporation Act contains a finding and declaration of the Congress of the need "to continue the present vital legal services program." The legal services program existing at the time the Act was adopted included representation of groups as well as individual clients, class actions, client education components and client advocacy training programs.

Section 1006(a)(1)(B) authorized the Corporation to make grants and contracts necessary "to carry out the purposes and

provisions of this title" and Section 1006 (a)(3)(B) authorized the Corporation directly or through grants or contracts to provide training and technical assistance for activities relating to the delivery of legal assistance. In Section 1007(a)(2)(C) the Corporation was directed to insure that grantees consider the relative needs of eligible clients for outreach, training and support services and provide appropriate training and support services.

In 1981, the Corporation's Office of Program Support let contracts to produce somewhere between 35 and 50 training manuals to be made available to the grantees, regional training centers and client groups in connection with education and training programs. The publication, entitled "Media Access", was one such publication. It was, as I understand, intended to round out the client advocacy training endeavors designed to permit clients to become as self-sufficient as possible, thereby minimizing the need for, and application for assistance to, legal services.

I would concede that this particular publication may be at the outer limits of the education and training activities of the Legal Services Corporation and its grantees. I do not believe that the publication of this pamphlet violates any statute or regulation. It was a judgment call on the part of program administrators with which we might not agree but certainly does not represent any illegality.

3. Mr. McCalpin, please note the following quote from a September, 1981 LSC publication entitled "Strategic and Tactical Research," page 13.

"Information gathering and most important, its application is an essential element in the power equation that defines the relationship between 'us' and 'them.' 'Them are the small number of people who control the lives and livelihood of the rest of 'us.'

"They ('them') have money and all the advantages it brings, including control of the media which often present a view of the world that supports and justifies inequality of power.

"'Us' have: people (our greater numbers), spirit (the determination to work for our interests and needs), and truth.... This 'power equation' is not an equation in the strictest mathematical sense, since the two sides of the equation, 'them' and 'us' are not yet equal. Making that equation balance is our goal."

These are the types of things that gall me and a number of other people. This is the type of activity that has been going on in the name of providing legal assistance to poor people, but that is never publicized. Congress puts restrictions on and they are ignored. With legal services programs claiming that they turn people away, is this the type of activity that the Corporation should have been engaged in? How much did it cost to produce this training manual?

The pamphlet entitled "Strategic and Tactical Research" was one of the group of 35 to 50 published pursuant to contracts let by the Corporation in 1981. It was intended to assist in the education and training of client groups and program personnel.

Although I was unaware of the existence of this publication prior to receipt of the question and have still not seen it in full, I understand that the question contains an accurate quote. My own view is that the quoted portion is an unfortunate and unnecessarily divisive statement; and, if it is reflective of the publication as a whole, I would say that the publication was an unwise venture, which I understand cost something less than

\$5,000. Again, the intended purpose of the publication was one within the scope of activities permitted or mandated by the Act. Whether it well served those activities may be debatable.


F. Wm. McCalpin

Dated at St. Louis, Missouri
this 19th day of May, 1983.

APRIL 5, 1983
COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

APPENDIX 6

ADVISORY OPINION
IN THE MATTER OF
PERSONNEL PRACTICES WITHIN
THE LEGAL SERVICES CORPORATION

We have been asked to examine certain possible improprieties relating to personnel practices within the Legal Services Corporation, and to determine specifically--

- A. Whether 5 U.S.C. 5503 prohibited payment of compensation to members of the Corporation's Board of Directors who were appointed when the Senate was in recess in December 1981, January 1982, and January 1983;
- B. Regardless of the application of 5 U.S.C. 5503, whether payments made to those Board members in 1982 were consistent with law and accepted practices; and
- C. Whether amounts payable under an employment agreement concluded by the Corporation with its new president in the fall of 1982 were excessive or in violation of law, whether irregularities in the negotiation of that agreement rendered it invalid, and whether the agreement was affected by the limitations imposed by Public Law 97-377, December 21, 1982.

Our advisory opinion is that 5 U.S.C. 5503 did not preclude payment of compensation to the Board members, and that the rate of their per diem compensation did not exceed that prescribed by law. Whether any member submitted false or fraudulent claims for payment, and whether they were paid in a manner consistent with acceptable practices applicable to the Legal Services Corporation and other public corporations generally, are matters which are the subject of ongoing audit and investigation by our Office and will be addressed in a subsequent report. The circumstances leading to the employment of the Corporation's current president and related matters are also the subject of continuing audit, but it is our opinion that the particular arrangement in question is

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subject to the specific limitations imposed by Public Law 97-377, December 21, 1982.

BACKGROUND

The Corporation was established by the Legal Services Corporation Act of 1974, Public Law 93-355, approved July 24, 1974, 88 Stat. 378. It was designed as a private nonprofit corporation, functioning outside and independently of the Federal Government, to administer legal assistance programs for the poor. See, generally, H.R. Rep. No. 247, 93rd Cong., 1st Sess., reprinted in 1974 U.S. CODE CONG. & AD. NEWS 3872.

The Legal Services Corporation Act is currently codified in 42 U.S.C. 2996 et seq. Section 2996c provides that the Corporation shall have a Board of Directors consisting of 11 voting members appointed by the President, by and with the advice and consent of the Senate. It further provides for staggered 3-year terms of office for those members, but directs that, "Each member of the Board shall continue to serve until the successor to such member has been appointed and qualified."

On December 30, 1981, and January 22, 1982, while the Senate was in recess prior to the convening of the 2nd session of the 97th Congress on January 25, 1982, the President appointed 10 new members to the Board of Directors of the Corporation to replace 2 sets of members appointed earlier. The terms of office of the 2 sets of Board members so replaced had expired in July 1980 and July 1981, and the members who were replaced had all been holding over in office under the provision of 42 U.S.C. 2996c which authorized them to continue to serve until the appointment of a successor. On February 25, 1982, the replaced Board members filed a complaint in the District Court for the District of Columbia (F. William McCalpin, et al. v. Howard H. Dana, Jr., et al., C.A. No. 82-542) challenging the legality of these recess appointments. Among other things, they contended that the President had no authority to appoint their successors through recess appointments without Senate action--a procedure available under the Constitution to fill certain "Vacancies" in office--since they were still serving as Board members under the hold-over provision of 42 U.S.C. 2996c and their offices were therefore not "vacant." On September 30 and October 5, 1982, the District Court entered an order and a memorandum opinion dismissing this complaint. The District Court judge

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held, in part, that the offices of the replaced Board members had become "vacant" when their terms expired in July 1980 and July 1981, notwithstanding their continued service under the hold-over provision of 42 U.S.C. 2996c, so that the President was not precluded by their holding over in office from replacing them under the recess appointment procedure. An appeal is now pending before the Circuit Court of Appeals for the District of Columbia.

During 1982, the Board members holding recess appointments received compensation at the rate of \$221 per day when they performed services for the Corporation.

Section 2996d, title 42 of the United States Code, provides that, "The Board shall appoint the president of the Corporation." On October 29, 1982, the Board of Directors passed a motion selecting Mr. Donald P. Bogard as the new president of the Corporation. The employment agreement then negotiated with Mr. Bogard included provision for payment of his basic salary, together with additional monetary benefits in the form of payment for membership in a private club, and continued salary for up to 360 days in the event of involuntary termination during his first year of service. That agreement was ratified by the Board at its December 17, 1982 meeting. However, a provision of Public Law 97-377, approved December 21, 1982, 96 Stat. 1876, specifically limited such payments by directing that: "* * * no officer or employee of the Legal Services Corporation * * * shall be reimbursed for membership in a private club, or be paid severance pay in excess of what would be paid a Federal employee for comparable service."

The appointments of members of the Board of Directors who had received recess appointments in December 1981 and January 1982 expired December 23, 1982, upon the final adjournment of the 2nd session of the 97th Congress. The 1st session of the 98th Congress was subsequently convened on January 3, 1983, and the Senate was then recessed until January 25, 1983. On January 21, 1983, 3 new recess appointments were made to the Board to replace 3 of the recess appointees whose appointments had expired the previous month.

The questions presented relate to the propriety of these transactions.

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VALIDITY OF RECESS APPOINTMENTS

It is our policy to refrain from commenting on matters pending litigation before the courts. See, e.g., 58 Comp. Gen. 282 (1979). Hence, it would not be appropriate for us to express any opinion relative to the validity of the recess appointments at issue in the case of McCalpin v. Dana, cited above, which is now on appeal before the Court of Appeals for the District of Columbia Circuit. Of course, if the courts find that those appointments are invalid, the appointees' eligibility to perform official acts and be paid would become questionable for that sole reason. Consequently, for purposes of the following discussion a judicial determination upholding the validity of the appointments will be assumed.

APPLICATION OF 5 U.S.C. 5503

The language of 5 U.S.C. 5502(a) and 5503(a) is pertinent to this discussion. Those subsections provide:

"(a) Payment for services may not be made from the Treasury of the United States to an individual acting or assuming to act as an officer in the civil service or uniformed services in an office which is not authorized by existing law, unless the office is later sanctioned by law.

* * * * *

"(a) Payment for services may not be made from the Treasury of the United States to an individual appointed during a recess of the Senate to fill a vacancy in an existing office, if the vacancy existed while the Senate was in session and was by law required to be filled by and with the advice and consent of the Senate
* * *."

These provisions of the Code are derived from section 2 of the act of February 9, 1863, ch. 25, 12 Stat. 646, which in its entirety states:

"SEC. 2. And be it further enacted, That no money shall be paid from the Treasury of the United States to any person acting or assuming to act as an officer, civil, military, or naval, as salary in any office, which office is not authorized by some previously existing law, unless where such office shall be subsequently sanctioned by law, nor shall any money be paid

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out of the Treasury, as salary, to any person appointed during the recess of the Senate; to fill a vacancy in any existing office, which vacancy existed while the Senate was in session and is by law required to be filled by and with the advice and consent of the Senate, until such appointee shall have been confirmed by the Senate."

That section was adopted to prevent recurrence of further recess appointments to positions which had not been authorized by Congress. Irregularities specifically referred to at the time included the use of the recess appointment procedure in 1862 to appoint nearly 400 individuals as brigadier general officers of the Army even though the Congress had limited the number of such officers to 200. Significantly, the provision was designed to cover only "offices in the Government." See S. Rep. No. 80, 37th Cong., 3d Sess. pages 4 and 5; and CONG. GLOBE, 37th Cong., 3d Sess. 564-565 (1863), particularly the statements of Senator Trumbull and Senator Harris. Under the act of June 27, 1866, ch. 140, 14 Stat. 74, the clauses of the provision were adopted without substantive change as sections 1760 and 1761 of the Revised Statutes. See GOULD & TUCKER, NOTES ON THE REVISED STATUTES OF THE UNITED STATES (1889). Those provisions of the Revised Statutes have in turn now been codified in 5 U.S.C. 5502(a) and 5503(a). In the codification of 5 U.S.C. 5502(a), the words "in the civil service or uniformed services" were substituted, with no substantive change intended, for the words "civil, military, or naval," which appear in the original enactment. See Historical and Revision Notes under 5 U.S.C. 5502 (1970 ed.); and S. Rep. No. 1380, 89th Cong., 2d Sess.

Although 5 U.S.C. 5503(a) states that it applies to any "individual," the subsection is incorporated in the United States Code as a part of title 5, "Government Organization and Employees," and it thus could be taken as having a more limited scope of application. The derivation of the subsection, described above, therefore becomes pertinent to the question of its coverage.

A statute incorporated into a code is presumed to be incorporated without substantive change even though it is reworded and rephrased and in the organization of the code its original clauses are separated. See 1A SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION 28.10 (4th ed. C.D. Sands 1972). Hence, our view is that 5 U.S.C. 5503(a) may not properly be construed separately from and without regard to 5 U.S.C. 5502(a), since both code sections are derived from the same statute, and that 5 U.S.C. 5502(a) and 5503(a) therefore have

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application only to a Government officer "civil, military, or naval," i.e., to a Government officer "in the civil service or uniformed services."

Concerning members of the Board of Directors of the Legal Services Corporation, 42 U.S.C. 2996c(c) provides:

"(c) Status. The members of the Board shall not, by reason of such membership, be deemed officers or employees of the United States."

And 42 U.S.C. 2996d(e)(1) provides:

"(e)(1) Except as otherwise specifically provided in this title, officers and employees of the Corporation shall not be considered officers or employees, and the Corporation shall not be considered a department, agency, or instrumentality, of the Federal Government."

Even though Government corporations generally are executive agencies as defined by 5 U.S.C. 105, it is our view that these specific provisions applicable to the Legal Services Corporation take the Corporation out of the executive branch of the Government. Furthermore, 5 U.S.C. 5502 and 5503 are not among the sections of title 5 of the United States Code relating to Government personnel which have specifically been made applicable to officers and employees of the Corporation under 42 U.S.C. 2996d(f).

It may be that the members of the Corporation's Board of Directors could properly be regarded as "officers of the United States" under the Constitution. This is an issue now pending consideration by the Court of Appeals in the case of McCalpin v. Dana, cited above, and we therefore offer no comment concerning that issue. However, it is well settled that officers of the United States may by law be exempted from coverage under 5 U.S.C. 5503 and other sections of title 5 of the United States Code. See, e.g., 16 Comp. Gen. 36 (1936).

Our view is that the Board members of the Legal Services Corporation may not properly be considered officers in the civil service of the Federal Government for purposes of title 5 of the United States Code, except to the extent specifically provided by statute. See 42 U.S.C. 2996c(c) and 2996d(e)(1), quoted above. The provisions of 5 U.S.C. 5502 and 5503, which apply generally only to Federal officers in

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the civil service and the uniformed services, have not specifically been extended by statute to the Board members. See 42 U.S.C. 2996d(f). It is therefore our further view that 5 U.S.C. 5502 and 5503 have ~~no application to the Legal Services Corporation and~~, accordingly, our opinion is that the Board members in question were not and are not precluded by 5 U.S.C. 5503 from receiving compensation for their services.

PAY FOR RECESS APPOINTEES GENERALLY

In response to the inquiry concerning generally accepted law and practice regarding payment of recess appointees, in decisions binding as precedent on the accounting officers of the executive agencies it has been held that a public office does not become "vacant" at the end of a term if the regularly appointed incumbent holds over in office with specific statutory authority to do so; hence, when the President through recess appointment replaces a holdover in office whose term expired when the Senate was in session, the vacancy in office occurs at the time of the appointment during the Senate recess, and the recess appointee is therefore not precluded by 5 U.S.C. 5503 from receiving payment for services. See 57 Comp. Gen. 213, 215 (1978); and 5 Comp. Dec. 594 (1899). See also S. Rep. No. 80, 37th Cong., 3d Sess., cited above, at pages 2-3. On the other hand, after the eligibility of an interim, recess appointee to hold office expires upon the end of the next succeeding session of the Senate, 5 U.S.C. 5503 generally operates to preclude payment of salary to a second recess appointee. See 7 Comp. Gen. 329 (1927); 6 Comp. Gen. 147 (1926); and 14 Comp. Dec. 901 (1908). Compare also 36 Comp. Gen. 444 (1956); and 28 Comp. Gen. 30, 36-37 (1948).

We recognize that the principles contained in those decisions concerning the application of 5 U.S.C. 5503 are not entirely consistent with certain comments made in a recent Federal district court opinion in the case of Staebler v. Carter, 464 F. Supp. 585 (D. D.C. 1979), at page 600 (footnote 38), which involved the question of whether an executive agency office was "vacant" even though occupied by a holdover incumbent, and which was followed in the district court's holding in McCalpin v. Dana, described above. However, we are not prepared at the present time to consider whether our earlier decisions should be revised, since judicial opinion on the issue does not appear to be firmly

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settled and the structure of the Legal Services Corporation differs significantly from that of an executive agency.

RATE OF COMPENSATION

As previously noted, during 1982 the Board members received compensation at the rate of \$221 per day.

Officers and employees of the Corporation are specifically authorized compensation at rates not to exceed "the rate of level V of the Executive Schedule specified in section 5316 of title 5, United States Code (5 U.S.C. 5316)." See 42 U.S.C. 2996d(d). A bylaw of the Corporation adopted in 1980 authorized members of the Board of Directors to receive compensation "not in excess of the per diem equivalent of level V of the Executive Schedule specified from time to time in section 5316 of title 5, United States Code, for their services * * * and reimbursement for travel, subsistence, and other expenses necessarily incurred therewith." See 45 F.R. 58363, September 3, 1980; and 45 C.F.R. 1601.14 (1981 ed.).

The level V pay rate of basic pay or salary, as prescribed by 5 U.S.C. 5316, is "the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title * * *." (That is, the rate fixed under the quadrennial review provisions of 2 U.S.C. 351-361, as adjusted yearly following the comparability increases in rates payable under the General Schedule.) During the period in question the annual rate of compensation for level V positions was fixed at \$57,500 under sections 101(g) and 141 of the act of December 15, 1981, Public Law 97-92.

Generally, the per diem compensation of persons intermittently employed in the Government service is computed under the provisions of 5 U.S.C. 5504 and is based on an hourly rate assuming a 52-week year of 40 hours per week. In the present case, the per diem compensation rate of \$221 for the Board members in 1982 is appropriate under that computation based on the per annum rate of \$57,500 for level V. We therefore conclude that the \$221 per diem compensation rate established for the Board members in 1982 did not exceed the rate authorized by law.

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EMPLOYMENT OF CORPORATE PRESIDENT

The negotiation process that resulted in the employment of the current president of the Corporation remains the subject of ongoing audit and investigation by our Office. However, to the extent that the employment agreement provided for benefits in the form of payment of private club dues, and severance pay exceeding that payable by law to civil service employees, limitations were specifically imposed by Public Law 97-377 in December 1982. This law prohibits payment of club dues, and limits the amount of severance pay to that payable to a Federal employee in similar circumstances. Since the president has not applied for reimbursement of dues paid to a private club, nor is he in a position to claim severance pay, those limitations have not been exceeded. Our opinion is that these limitations prohibit expenditures for the purposes in question, and that no such expenditures may be allowed. Should the president of the Corporation believe he is entitled to payment under either of those provisions of his employment agreement he would, of course, be able to pursue his remedy in the courts.

Comptroller General
of the United States

APPENDIX 7

May 26, 1983

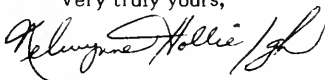
Honorable Orrin G. Hatch
Chairman
Committee on Labor and Human Resources
United States Senate
SD-420 - Dirksen Bldg.
Washington, D.C. 20510

Dear Senator Hatch:

Enclosed please find my responses to your written questions regarding my testimony on the reauthorization of the Legal Services Corporation.

May I thank you again for the opportunity to testify on this most important matter.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'Nelwynne Hollie', followed by a large, stylized flourish.

Nelwynne Hollie
President - N.C.C.

ENCLOSURE:

NH/gh

PRIVATE ATTORNEY DELIVERY

There are three major issues of concern to the client community with regard to the growing use of private attorneys in the delivery of services to eligible clients. These are, quality control, accountability to the client community and the scope of representation.

As we examine the various delivery models, we find that staff programs have almost universally established systems for on-going review of the quality of the legal work being performed. The methods for doing so vary from program to program but, the existence and viability of such systems are reviewed, at least annually, by the Corporation when the program is monitored. The same is not true in regard to services provided by private attorneys.

In too many instances, the only check on the work of private attorneys is related to the fees charged. Corporation grantees have established a "schedule of payments" and examine the billings for a particular case type against this schedule. This does not establish the quality of the work performed. It does not even insure that the attorney has identified the correct issues. The situation with regard to pro-bono representation is even less structured. Here, the major emphasis is placed on insuring that the referral system works and not that adequate legal work was done.

At minimum, each program should be required to adopt a method for determining client satisfaction at the time of case closing. Further, there should be a summarization of the issues and the steps taken submitted by the attorney along with the final request for payment. This report should be reviewed at the local level on a routine basis and maintained on file for spot checks by the corporation. At maximum, we believe that programs should establish a system of peer review so that the actual legal work of private attorneys could be examined.

The client community recognizes that there are ethical issues involved in the review of private attorneys' work produce. Also, we are aware of the potential danger that fewer private attorneys would participate in reduced fee or pro-bono work if the standards for review exceeded what they considered

reasonable. However, it is essential that there be an awareness by the private attorney that his/her work is subject to review and that reduced fee does not mean reduced quality.

The role of the Legal Services Corporation is the same in this regard as is the case with staff programs. That is, while the Corporation, by statute, may not interfere in the client/attorney relationship it can act to insure that each grantee has a system in place which monitors the quality of the legal work of the private attorney.

ACCOUNTABILITY

It is important that work done using Corporation funds be responsive to the real needs of eligible clients. Staff programs have governing bodies which contain client directors who can insure that this is true. When private attorneys or bar associations are the Corporation's grantee, too often this element of control is not present. The Corporation can improve its functioning in this area simply by enforcing its own regulations. These regulations require that every grantee have a governing body composed of both attorneys and clients. This requirement has, on a case by case basis when the need arose, been waived in part to allow an advisory body where a governing body was not a legal or practical reality. However, enforcement of these provisions have become less and less stringent as time has past. It is, we think, essential that the Corporation review its activity in this area to insure that all delivery models that it funds are accountable to the client community and not simply operating at the whim and caprice of attorneys.

SCOPE OF REPRESENTATION

The Corporation has not, as far as we know, taken any steps to insure that private attorneys involved in delivering services to eligible clients have agreed to undertake representation in the forum which is most likely to result in the accomplishment of the client's goal. There are some attorneys who feel that only certain kinds of cases should be undertaken by any legal services program. Others have a bias against the use of certain remedies. The Corporation and local programs should insure that every private attorney who is involved in

delivery systems funded under the Act provide assistance in any matter permitted by the enabling legislation and in the most appropriate forum. The Corporation could develop a standard form for this purpose which could be used by all of its grantees be they staff programs or otherwise.

Legal Services Corporation grantees are currently precluded by P.L. 97-377 from providing representation to eligible clients before legislative bodies. This is a new restriction and in my view a most unfortunate one. As indicated in my written testimony, there is benefit to the legislator, the client, the courts and the society as a whole when such representation is permitted.

The current Corporation regulations, in the view of the client community, provide ample safeguards against the use of legislative advocacy in the pursuit of "attorney goals." These regulations require that in every instance there be on file a retainer agreement which, at minimum, sets forth the identity of the client, the issue for which relief is sought, the legislative body to be addressed and the program which is authorized to provide the representation. Further, the regulations require that the governing body of each recipient make a determination as to the need for the establishment of any full time legislative effort on a program's part. The board must explicitly find doing so is, the best means to provide economical and effective delivery of services to eligible clients.

I believe that Corporation oversight of compliance with this regulation would be enhanced if the programs, during their priority-setting process, made public their legislative advocacy undertakings.

LOCAL GOVERNING BODIES

It is my strong belief that the local boards of directors are an essential element in the operation of all recipients of Corporation funds. It is through these bodies that policy is set, priorities established and accountability rendered to the legal and client communities. This local control is both a necessary and highly desirable in view of the highly variable conditions which exist throughout the country.

The existence of the local boards of directors allows each program to determine what delivery system, or mix of systems, is most appropriate in that community. These boards are in a position to determine suitable eligibility levels taking into account available resources vs. local needs. Through their policy actions, local boards can insure that resources are being used in the most economical and efficient manner. Further, they are in a position to insure that client grievances about program performance are considered on an expeditious basis.

LEGAL SERVICES FOR THE ELDERLY

132 West 43rd Street, 3rd floor

New York, N.Y. 10036

(212) EX 1-0120

Jonathan A. Weiss
Director

May 13, 1983

The Honorable Orrin G. Hatch
Chairman
Committee on Labor and
Human Resources
Washington, D. C. 20510

Dear Senator Hatch:

Thank you for your kind words of May 9th. It was my pleasure to testify and I will be pleased to make myself available in the future for any inquiries or projects that I can capably handle.

In response to your questions:

1) There is a general sense that once a local organization becomes a grantee that it will always be a grantee. The rationale for this sense would seem to be the necessity for continuity on cases, continuity with the community, and the continued accumulation of valuable materials and facilities. I note that Senator Goldwater has introduced a bill concerning cable television with presumptive renewability. No such rationale, of course, should in any way impede serious and thorough evaluation of the legal activities of the grantee with appropriate actions based on properly conceived conclusions by the funding source.

2) I think it is difficult to characterize how legal service organizations are concerned. Any inquiry should distinguish between the rhetoric and "priorities" of the management of the programs, on the one hand, and the activities of the lawyers of the program on the other. My experience is that the vast majority of neighborhood lawyers are primarily concerned with the legal needs of individual clients. It would be, in my opinion, unethical to consider the political ramifications of a class action by the attorney who represents the class and is in charge of the litigation. I also believe that "priority" setting is also often a waste of time and manifests an indifference to clients.

3) I have consistently opposed the payment of any money from legal services funds to organizations which lobby on behalf of any cause, including legal services; e.g. NLADA and PAG on governmental ethical grounds. Payment to bar associations which provide facilities which assist in representing clients seems acceptable if it is an efficient use of resources. In spite of my objections, money has been deducted from my grant in the past by the funding conduit in New York to pay NLADA and PAG.

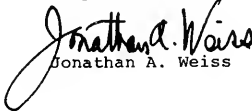
4) I heard this reason given for membership in the NLADA for the first time last year. It is false. Even if one were to disregard the NLADA dues paid as part of the premiums paid for malpractice insurance, there is cheaper insurance available: - particularly since there has been a very low rate of malpractice claims. I participated in New York in arranging for malpractice insurance which is cheaper than that offered by NLADA.

5) Private law firms do not have Boards of Directors. I do not see why legal services programs should have them.

The most plausible justification for Boards of Directors would be that they assist in raising private funds or deflect unjustified political criticism. Certainly they should be forbidden from attempting any involvement in a neighborhood lawyer's handling of a case and their presence may create conflicts of interest. I have not observed many positive effects in these regards but I have observed the negative characteristics.

If I can further amplify these remarks, please let me know.
Thank you.

Very truly yours,


Jonathan A. Weiss

JAW:FMD



AMERICAN BAR ASSOCIATION

Writer's Direct Number: 415/777-6294

May 19, 1983

The Honorable Orrin G. Hatch
Chairman, Committee on Labor
and Human Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for allowing me to appear before the Committee on Labor and Human Resources on May 4, 1983 to testify in support of the reauthorization of the Legal Services Corporation.

At the conclusion of the hearing, you announced that the record would remain open for an additional period of time in order to allow the filing of additional comments and information bearing on the Corporation's reauthorization. I would like to take this opportunity to present some additional remarks to supplement my prior testimony and I ask that this letter be made part of the hearing record.

Allegations Against Legal Services Programs

I wanted to advise you that I intend to pursue my suggestion during the hearing that the American Bar Association establish a mechanism for investigating charges against legal services programs. As I mentioned, I believe it is time to lay many of these allegations to rest through an impartial and nonpartisan method.

We will be discussing this issue and possible procedures at the upcoming meeting of the Standing Committee on Legal Aid and Indigent Defendants on June 4 in Washington, D.C. If the Committee endorses this concept, we will proceed to develop a plan which can be presented for approval and funding through the appropriate ABA channels. Although it is uncertain how long this process might take, I certainly hope that a mechanism will eventually be available for resolving these allegations.

As you know, in most institutions the process of designing, obtaining approval and implementing a program is time consuming. The ABA is no exception. Indeed, because it is a volunteer organization the process is even slower. Furthermore, there may be some who question whether my committee is the appropriate committee of the ABA to conduct the program in view of my committee's active involvement in support of the Legal Services Corporation. If another committee or section of the ABA is to become involved, the time of implementation will be further delayed. Consequently, I cannot hold out any promise that the ABA can get organized to do the job while the current legislation is pending. However, we hopefully can put in place an ongoing procedure which will be very helpful to Congress' oversight function and for future legislation.

Non-acquiescence Practices and Policies of Government Agencies

During my oral statement I mentioned the practice of some government agencies to refuse to apply court decisions with which they disagree to other than named plaintiffs. This practice, I noted, necessitates the bringing of class action suits in order to provide relief to all aggrieved individuals in an economical and efficient manner.

In response to your interest in additional information on this issue, I would call to your attention two examples of non-acquiescence practices of which I am aware.

The Social Security Administration has a policy of non-acquiescence to court decisions. Social Security Ruling #80-11c is an example. It was issued in response to Levings v. Califano, 604 F.2d 591 (8th Cir. 1979), in which the Eighth Circuit Court of Appeals held that, under the Social Security Act and HEW's own regulations, persons residing in certain types of nursing homes were entitled to receive Supplemental Security Income benefits. (It is the position of the Social Security Administration that these agency rulings are binding on the administrative law judges despite a court decision to the contrary. See 20 C.F.R. §422.408).

Another instance of non-acquiescence by the Social Security Administration is its response to the ruling in Finnegan v. Mathews, 641 F.2d 1340 (9th Cir. 1981), which prohibited the application of current regulations to terminate the SSI disability benefits of recipients who had been "grandfathered" into the program from state disability rolls. The Social Security Administration did not attempt to appeal this ruling to the United States Supreme Court but instead, in January, 1982, issued Social Security Ruling #82-10c, non acquiescing in Finnegan (Exhibit A). Louis B. Hays,

its Associate Commissioner, Office of Hearings and Appeals, then instructed all administrative law judges that the agency ruling was binding upon them and that the Finnegan criteria should be ignored, "including cases involving claimants who reside within the jurisdiction of the United States Court of Appeals for the Ninth Circuit." (Exhibit B).

Recently, three district courts have held this practice to be invalid, all ruling that SSA is bound to follow the decision of the circuit court of appeals within the court's jurisdiction. Siedlecki v. Schweiker, Civil Action No. 82-61R (W.D. Wash. 1/28/83) (Exhibit C); Chee v. Schweiker, No. CIV-82-693-PCT-VAC (D-Ariz. 12/14/82) (Exhibit D); Hollingsworth v. Schweiker, No. N 81-0035C (E.D.Mo. 3/3/83) (Exhibit E). I am advised that further litigation on this issue is pending.

The Department of Housing and Urban Development has also at times refused to apply the decision in an individual action to the class of people affected by its policy. For example, Underwood v. Hills, 414 F.Supp. 526(D.D.C. 1976), was brought as a nationwide class action to obtain a congressionally mandated operating subsidy program for FHA-subsidized projects. HUD's failure to establish this program resulted in a multitude of lawsuits around the country by tenants of projects, and the ruling by at least nine district courts that HUD was required to implement the program. Nevertheless, HUD refused to establish the subsidy program for any project not encompassed by one of the district court's orders.

Such actions by government agencies require that an economical means of obtaining relief be utilized. This is one of the principal virtues of the class action. The denial of the use of this procedural device to legal services programs, as some suggest, would result in the retrying time after time of the same issue and the squandering of scarce resources.

But in addition to these practical reasons why government compliance with court decisions is needed, there is an underlying philosophic reason why such compliance must be ensured. Justice Brandeis stated it well in his opinion in Olmstead v. United States, 277 U.S. 438 (1928), at 485:

Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the

omnipresent teacher. For good or for ill, it teaches the whole people by its example If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.

National and State Support Programs

During his testimony, William Olson called for the abolition of national and state support programs. Because of time constraints, I was unable to respond to Mr. Olson's position and to expand on my prepared testimony which expressed ABA support for the continuation of the activities and funding of the national and state support programs.

We believe that the support centers are a critical element in the effective delivery of legal services to the poor. They provide essential training and support to often inexperienced legal services attorneys. Similarly, the expertise and experience they provide are a valuable resource for private attorneys providing legal services to the poor. Robert Hill, chairman of the pro bono committee of the American Corporate Counsel Association, recently testified about the usefulness of the national support centers to his program before the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice (Exhibit F). The enclosed resolution further demonstrates our attitude on the issue of support centers (Exhibit G).

Thank you for this opportunity to supplement the record.

Yours truly,



Robert D. Raven
Chairman, Standing Committee
on Legal Aid and Indigent
Defendants

RDR:sss

cc: Hon. Thomas F. Eagleton

EXHIBIT A

SECTION 1614(a)(3)(E) (42 U.S.C. 1382c(a)(3)(E) SUPPLEMENTAL SECURITY INCOME—CONTINUANCE OR CESSATION OF A GRANDFATHEREE'S DISABILITY—A RULING OF NON-ACQUIESCENCE

20 CFR 416.994(e)

SSR 82-10c

Finnegan v. Matthews, 641 F.2d 1340 (1981)

The Social Security Administration (SSA) does not acquiesce in the court's decision.

The claimant, who had been receiving State disability welfare payments since 1972, was grandfathered into the Supplemental Security Income (SSI) program on January 1, 1974. Section 1614(a)(3)(E) of the Social Security Act (the Act) provides for the continued payment of SSI benefits to a grandfatheree who "is permanently and totally disabled as defined under a State plan...so long as he is continuously disabled as so defined." Following a continuing disability investigation, SSA determined that the claimant's SSI benefits would terminate because he did not meet the requirements for entitlement at the time of the continuing disability investigation. This determination was affirmed by the district court.

The court of appeals, however, reversed SSA's determination. It found that SSI disability benefits to a grandfatheree may not be terminated unless SSA shows that there was either a material improvement in the grandfatheree's medical condition or a clear and specific error in the prior State determination. Because neither of those conditions was shown by SSA to be met, the court held that SSA's termination of the claimant's SSI benefits was improper.

SSA believes that the court's standard for determining whether SSI disability benefits to a grandfatheree should terminate would be impossible to administer and that the correct standard for making such a determination is in 20 CFR 416.994(e); i.e., that disability of a grandfatheree terminates when his or her "disability as shown by current medical or other evidence does not meet the criteria of the appropriate State plan" and does not meet the Federal criteria. Many grandfatherees were on State disability rolls for years before conversion, and the evidence on which they were originally allowed may not be available, or may not even exist.

Therefore, in those cases, SSA could not possibly prove either "material improvement" or "clear and specific error" in the prior State determination. Thus, under 20 CFR 416.994(e) the grandfatheree properly remains in SSI benefit status only until it is found that the grandfatheree's disability, as shown by current medical or other evidence, meets neither the State nor Federal definition of disability. SSA believes that this regulation is fully consistent with the requirements of section 1614(a)(3)(E) of the Act and with congressional intent.

Consequently, SSA holds that the standard in 20 CFR 416.994(e), and not the one set forth by the court, should apply in determining whether the disability of a title XVI grandfatheree has ceased.

EXHIBIT B

279

DEPARTMENT OF HEALTH & HUMAN SERVICES

Refer to: SGP-2

Memorandum

Date: FEB 23 1982

22 (82)
CI-13From: Associate Commissioner
Office of Hearings and AppealsSubject: Ruling of Non-Acquiescence-Continuance or Cessation of Grandfathered's
Disability - INFORMATIONTo: All RCALJs
All ALJs
All ALJs

On April 16, 1981 the United States Court of Appeals for the Ninth Circuit issued a decision holding that Supplemental Security Income (SSI) benefits based on disability to a claimant who had been converted from the State welfare rolls to the Federal SSI program in January 1974 (grandfathered) could not be terminated unless SSA showed that there was either a material improvement in the claimant's medical condition or a clear and specific error in the prior State determination.

I want to draw your attention to Social Security Ruling SSR 82-10c in the January 1982 quarterly Rulings publication, indicating the Social Security Administration's non-acquiescence in the Court's decision. Under SSA policy, it is not necessary to show that there has been improvement in the claimant's condition or any error in the prior State determination for benefits to be ceased. It is SSA's position that a grandfathered's SSI benefits based on disability may be ceased when the claimant's disability, as shown by the current medical or other evidence, does not meet the criteria of the appropriate State plan or the Federal criteria—i.e., the impairment is such that the claimant is able to engage in substantial gainful activity (20 CFR 416.994).

Although the ruling addresses only criteria for ceasing disability for a grandfathered, you should be aware that the criteria for ceasing benefits based on disability also apply where the claimant is a title II or SSI non-grandfathered beneficiary. This basic policy is reflected in SSR 81-6 (January 1981, p.27).

Social Security Ruling SSR 82-10c is binding on all components of SSA including administrative law judges and the Appeals Council (20 CFR 422.408). SSA's policy must be followed in cases involving the issue of cessation of disability, including cases involving claimants who reside within the jurisdiction of the United States Court of Appeals for the Ninth Circuit.

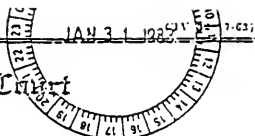
Louis B. Rags
Louis B. Rags

cc:
Office of Appeals Operations
Co-Deputy Chairperson, Appeals Council

RECEIVED 12 4 1983

EXHIBIT C

JUDGMENT ON DECISION BY THE COURT



United States District Court

FOR THE

WESTERN DISTRICT OF WASHINGTON

At Seattle

CIVIL ACTION FILE NO. C82-61R

RONALD SIEDLECKI, et al.

Plaintiff,

vs.

RICHARD SCHWEIKER,

Defendant.

JUDGMENT

This action came on for trial (hearing) before the Court, Honorable Barbara J. Rothstein, United States District Judge, presiding, and the issues having been duly tried (heard) and a decision having been duly rendered,

It is Ordered and Adjudged that the defendant's motion for summary judgment is DENIED and plaintiffs' motion for summary judgment is GRANTED. Further, plaintiffs' request for a permanent injunction under the terms of this court's March 12, 1982 order is GRANTED.

Adverse administrative decisions against members of the plaintiffs' class which have been rendered post-Finnegan (April 16, 1981), where administrative decisions do not expressly adopt the Finnegan standards are REVERSED.

FILED IN THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

JAN 23 1983

BRUCE RIFKIN, Clerk
By _____ Deputy

Dated at Seattle, Washington this 28th day of January, 1983.

[Signature]
Deputy Clerk

FILED IN THE
UNITED STATES DISTRICT COURT
Western District of Washington

JAN 26 1983

BRUCE RIFKIN, Clerk
By *[Signature]* Deputy

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RONALD SIEDLECKI, et al.,)

Plaintiff,)

NO. C82-61R

v.)

ORDER DENYING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT
AND GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT

RICHARD SCHWEIKER,)

Defendant.)

THIS MATTER comes before the court upon cross motions for

summary judgment by Ronald Siedlecki, who represents the certified class of plaintiffs, and by defendant, Richard Schweiker, Secretary of the United States Department of Health and Human Services ("the Secretary"). This case involves plaintiffs' challenge to the Secretary's use of regulatory standards to cease disability benefit payments to "grandfathered", that is, benefit recipients originally determined by the State to be disabled. The Ninth Circuit Court of Appeals in Finnegan v. Matthews, 641 F.2d 1340 (9th Cir. 1981) held that benefits to grandfathered could not be terminated absent proof of a material improvement in the medical condition of the

ORDER

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1 disabled person or the commission of a clear and specific error
 2 during the prior State determination which awarded benefits. Plain-
 3 tiffs contend that this standard should be applied to them, rather
 4 than the Secretary's regulations, which contain no such requirement.
 5 Having carefully considered the motions, memoranda of counsel, and
 6 the entire record, the court finds and rules as follows:

7 I. BACKGROUND

8 In October, 1972, Congress repealed Title XIV of the Social
 9 Security Act which had provided federal grants to state-administered
 10 disability assistance programs. 42 U.S.C. §§ 1351-1355, Pub. L.
 11 No. 92-603, 86 Stat. 1484 § 303 (repealed 1972). Congress estab-
 12 lished a program called the Supplemental Security Income for Aged,
 13 Blind and Disabled ("SSI") under which the federal government as-
 14 sumed the burden of providing benefits directly to those people who
 15 were defined as disabled. 42 U.S.C. § 1381-1383. The program
 16 became effective in January, 1974.

17 As part of the definition of "disability" under the Act, Con-
 18 gress included the following "grandfather" clause:

19 [A]n individual shall also be considered to be
 20 disabled for purposes of this subchapter if he
 21 is permanently and totally disabled as defined
 22 under a State Plan approved under subchapter
 23 XIV or XVI of this chapter as in effect for
 24 October 1972 and received aid under such plan
 25 (on the basis of disability) for December 1973
 26 (and for at least one month prior to July
 27 1973), so long as he is continuously disabled
 28 as so defined.

29 42 U.S.C. § 1382c(a)(3)(E) (Supp. 1980) (emphasis added). The
 30 availability of federal disability benefits to grandfatherees,
 31 those who had received aid under a state plan for at least one

32 ORDER

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month prior to July 1973, is controlled solely by the operation of the statutory grandfather clause. See Finnegan v. Matthews, 641 F.2d 1340, 1342 (9th Cir. 1981). The following regulation governs the cessation of disability benefits to grandfatherees:

(a) General. When the medical or other evidence in your file shows that your disability has ended, we will contact you and tell you that the evidence in your file shows that you are able to do substantial gainful activity and that your eligibility for benefits will end. . . .

(e) Persons who were found disabled under a State plan. If you became entitled to benefits because you were found to be disabled under a State plan, we will find that your disability ended in the later of the following months--

(1) The month in which your disability, as shown by current medical or other evidence, does not meet the criteria of appropriate State plan; or

(2) The month in which your disability ended under the provisions of paragraphs (b), (c) or (d) of this section.

20 C.F.R. § 416.994(e) (1982):

In Finnegan, the Court interpreted the grandfather clause.

Mr. Finnegan's application for state disability was approved by the state of Washington in 1972. In 1974 he was converted to the SSI program as a grandfatheree. In December, 1975, he received notice that his benefits would cease because his medical condition had allegedly improved and his disability had ceased. At the agency hearing the administrative law judge ("ALJ") found that Finnegan's medical condition had not improved, but that the then Department of Health, Education and Welfare was entitled, based on agency regula-

ORDER
Page -3-

1 tions, to make an "initial determination" of Finnegan's eligibility.
 2 The district court judge affirmed, but the Ninth Circuit reversed
 3 finding that the Secretary's position violated not only the plain
 4 meaning of the statute's language but common sense as well:

5 The sole function of a grandfather clause
 6 is to prevent the harsh and often unfair opera-
 7 tion of a statutory change. . . . The unfair-
 8 ness which could have resulted from the statu-
 9 tory change--the undesired potential side
 10 effect of the new disability program-- would
 11 have been the discontinuance of benefits to
 12 former recipients prompted solely by a change
 13 in the rules of the game and undertaken in the
 14 absence of any improvement in their disabling
 15 condition. This harsh side effect was averted
 16 through the inclusion of the grandfather
 17 clause. Yet, by reading the clause not as an
 18 exemption from prejudice, but as a temporary
 19 delay of the onset of such prejudice, the
 20 Secretary seeks to preserve the same harsh
 21 side effect which the grandfather clause was
 22 intended to eliminate.

23 641 F.2d at 1146-47.

24 The instant case is similar to Finnegan. Initially, SSA had
 25 informed Mr. Finnegan that he was medically improved and, therefore,
 26 no longer disabled. The ALJ found that Finnegan had not improved
 27 but still found him ineligible for disability benefits. The ALJ's
 28 decision on Siedlecki includes a finding that his medical condition
 29 had improved. See ALJ's decision in the case of Ronald E. Siedlecki
 30 attached to Defendant's Motion to Dismiss, Dkt. No. 42. This court
 31 has already found, however, that there is nothing at all in the
 32 administrative record to substantiate the ALJ's finding. Order of
 33 August 9, 1982 Denying Defendant's Motion to Dismiss, Dkt. No. 59.
 34 Nowhere is there any finding or discussion of Siedlecki's condition
 35 under the state criteria which made him eligible compared to his

1 current condition. In terms of what is required by Finnegan, the
 2 finding by the ALJ is meaningless. In the various briefs submitted
 3 by the Secretary, he does not argue that the medical improvement
 4 standard required by Finnegan has been met for either Siedlecki or
 5 any of the other named plaintiffs.

6 II. LEGAL ARGUMENTS

7 A. THE SECRETARY'S AUTHORITY

8 The Secretary's first argument is that the scope of review by
 9 this court is limited. Various well known principles of review of
 10 agency action are cited: The legality of agency action is presumed.
 11 Schwaike v. Grav Panthers, 453 U.S. 34 (1981). Regulations can be
 12 set aside only if they are arbitrary, capricious, an abuse of dis-
 13 cretion, or otherwise not in accordance with the law. Randolph-
 14 Sheppard Vendors of America, Inc. v. Harris, 628 F.2d 1364, 1366
 15 (D.C. Cir. 1980). The plaintiffs' position is, of course, that the
 16 Secretary's action and official policy is "not in accordance with
 17 the law". Furthermore, if the Secretary's action and official
 18 policy contravenes the Finnegan standard, as contended by plain-
 19 tiffs, this court is not even called upon to interpret the statute,
 20 because the Ninth Circuit has already spoken on the subject.¹

21 ¹ Defendant presented the same argument on agency discretion to the
 Court of Appeals. The Court wrote:

22 We are mindful of the maxim that a court should
 23 give deference to the interpretation of a statute
 by the agency charged with its administration. . . .
 24 It is well established, however, that "Reviewing
 25 courts are not obliged to stand aside and rubber-
 stamp their affirmance of administrative decisions
 26 that they deem inconsistent with a statutory man-
 date or that frustrate the congressional policy
 underlying a statute."¹

27 641 F.2d at 1347 n. 9a. (citations omitted).

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1 B. THE SECRETARY'S POLICY VERSUS THE FINNEGAN STANDARD

2 The Secretary also contends that the Finnegan decision, by
3 requiring proof of an improvement in medical condition or a clear
4 and specific error in the prior State determination, ignores other
5 factors which could alter an individual's eligibility for benefits,
6 such as vocational adjustment, adaptation, training, augmentation
7 of educational attainment or advances in medical treatment.² De-
8 fendant points to nothing in the record, nor has the court found,
9 evidence that plaintiffs were terminated because of any kind of
10 improvement from their initial condition as found by the State.
11 The issue is, therefore, irrelevant.

12 Also irrelevant is the Secretary's argument that evidence on
13 which recipients' claims were originally allowed "may not be avail-
14 able or may not even exist". The Secretary has submitted nothing
15 to support this argument. He does not even allege that plaintiffs'
16 files are deficient regarding the initial determination of dis-
17 ability by the State.

18 The Secretary next argues that Finnegan does not control here
19 because the decision focused on the distinction between grandfather-
20 ees and "rollbacks"³ and did not discuss the termination regulation;

21 ² In Patti v. Schweiker, 669 F.2d 582 (9th Cir. 1982) the Ninth
22 Circuit held that specific findings of improvement are required in
23 order to terminate any SSI recipients, not just grandfatherees. The
24 type of improvements was not just medical but extended to other
25 improved conditions. Plaintiffs have stated that they are not
26 trying to restrict SSA to a finding of medical improvement only. As
27 explained above, the issue is not properly before the court.

28 ³ The rollback amendment to the grandfather clause requires that
the individual be disabled for at least one month prior to July
1973. The purpose of the amendment was to prevent states from

28 ORDER

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1 therefore, the standard for termination was a peripheral issue. It
 2 is true that the decision does not dwell on the regulation, but to
 3 say that the standard for termination was peripheral is absurd.
 4 The distinction between grandfatherees and rollbacks was reviewed
 5 solely to understand the case law in the area and reach the central
 6 question of what standard applies to the termination of grandfather-
 7 ees. See 641 F.2d at 1342 n. 1; 1347.

8 As for the regulation, the Secretary asserts that the Court in
 9 Finnegan made no mention of either the new regulation or the an-
 10 nouncement of the Secretary's policy on August 20, 1980. Because
 11 the new regulation was part of the record and the arguments pre-
 12 sented to the Ninth Circuit in Finnegan, the Secretary's assertion
 13 is incorrect. See Exhs. D & E to Plaintiffs' Response to Defend-
 14 ant's Memorandum for Summary Judgment. But more importantly, the
 15 argument misses the mark. The issue, as the Ninth Circuit stated
 16 in Finnegan, is not the regulation itself, but rather the Secre-
 17 tary's policy and interpretation of the regulation.

18 The interpretation of the regulation by the Secretary has not
 19 changed since Finnegan. The Secretary's position in Finnegan was
 20 that grandfatherees were subject to initial determination of eligi-
 21 bility by the Social Security Administration. The new regulation
 22 and the Secretary's announcement of policy regarding the regulation
 23 was published August 20, 1980, after the Secretary's final decision
 24 transferring welfare recipients onto the disability rolls in antici-
 25 pation of the federal takeover. Later, these "rollbacks" were
 26 classified as presumptively disabled until an initial determination
 of eligibility could be made. See 42 U.S.C. § 1383(a)(4)(B)(Supp.
 1980); 20 C.F.R. § 416.954; Finnegan v. Matthews, 641 F.2d at 1342.

in Finnegan but before argument to the Ninth Circuit. To a comment that a showing of medical improvement should be made before benefits could be terminated, the Secretary responded as follows:

Response: Our previous regulations dealing with cessation of disability (in cases other than widow's and widower's claims) provided that disability should be found to have ended when the impairment is no longer of such severity as to prevent the individual from engaging in any substantial gainful activity (SGA). The regulations have been interpreted by some to mean that not only must the current evidence show that the individual is unable to engage in SGA but that the evidence must also demonstrate that the impairment forming the basis for the previous allowance (or continuance) has improved. This interpretation can result in the payment of benefits to persons who can engage in substantial gainful activity and who are no longer disabled or blind within the meaning of the law, but for whom actual "improvement" cannot be shown. These recodified regulations make it clear that disability ends when current evidence shows that the individual is able to engage in SGA regardless of whether actual improvement can be demonstrated. We do not agree that this position ignores the position taken by any Federal court. The decision that a person's disability or blindness has ended will not be based on a reexamination of old evidence but will be based on new evidence which will have to reasonably show that the person is able to perform substantial gainful activity. We do not agree that a finding that a person is disabled or blind should be allowed to stand in the face of evidence to the contrary simply because of the lack of evidence clearly showing medical improvement.

45 Fed. Reg. 55582 (August 20, 1980) (emphasis added). The above quote makes it clear that the Secretary still intends to make initial determinations of the eligibility for benefits of grandfatherees. This policy is in direct contravention to the position of various federal courts.

More particularly, since the decision in Finnegan, the Secretary's policy has become one of official opposition to the law established in the Ninth Circuit. SSA's policy is not to acquiesce with Finnegan. This policy has become known as the SSA's policy of "non-acquiescence":

The Social Security Administration (SSA) does not acquiesce in the court's decision [Finnegan]. . . .

SSA believes that the court's standard for determining whether SSI disability benefits to a grandfatheree should terminate would be impossible to administer and that the correct standard for making such a determination is in 20 CFR 416.994(e); i.e., that disability of a grandfatheree terminates when his or her "disability as shown by current medical or other evidence does not meet the criteria of the appropriate State Plan" and does not meet the Federal criteria. . . .

Consequently, SSA holds that the standard in 20 CFR 416.994(e), and not the one set forth by the court, should apply in determining whether the disability of a title XVI grandfatheree has ceased.

Social Security Rulings, SSR 82-10c (January, 1982).

The Chief of the Washington State Office of Disability Insurance, which is SSA's contractual agent for performing evaluations of continuing disability has stated:

We are not obliged or permitted to consider the decisions that have been rendered in the past. We are to look at that case as if it were an initial decision and make our judgments accordingly as we understand the current standards.

Stated another way, we would treat that case as if it were an initial claim and if we could allow it we would continue it. If we could deny it we would terminate it.

Deposition of Ed. Davis, pp. 12, June 18, 1982.

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1 On May 25, 1982 the Director of the Human Resources Division
 2 of the United States General Accounting Office, Gregory J. Ahart,
 3 reported on SSA's program for reviewing the continuing eligibility
 4 of disabled persons to the Senate Subcommittee on Oversight of
 5 Government Management. In the report, Ahart noted that "many of
 6 those losing their disability benefits have been on the SSA rolls
 7 several years, still have what we would all consider to be severe
 8 impairments, and have experienced little or no medical improvement.
 9 This raises questions about how and why these people are being
 10 terminated, and the fairness of SSA's decisions." Later he stated
 11 that SSA has instructed state agencies to adjudicate claims in
 12 generally the same manner as initial claims. The result of these
 13 instructions was that state agencies are gathering only current
 14 evidence and using it to determine if the beneficiary currently
 15 meets SSA's criteria for disability. Exh. G to Plaintiffs' Re-
 16 sponse to Defendant's Memorandum for Summary Judgment.

17 In response to requests for admissions submitted by plaintiffs
 18 in this case, defendant made the following admissions. SSA policy
 19 on continuing disability was changed in May 1976 to require that
 20 the individual's current condition be evaluated and a determination
 21 as to continuance or cessation be made based on current medical
 22 findings. The provisions of the Washington State plan from which
 23 persons were grandfathered into SSA are different from the current
 24 uniform federal-SSA disability standards.

25 And finally, in Defendant's Reply to Plaintiff's Response, the
 26 Secretary states, "[t]he Secretary's position is that a showing of
 27

1 improvement is not necessary in order to terminate benefits where
 2 current evidence indicates that an individual does not meet state
 3 or federal criteria for disability." The Secretary has failed to
 4 demonstrate that Finnegan is an extraordinary decision.⁴ Even if
 5 it were, his position, which clearly contravenes Finnegan, cannot
 6 be justified.⁵

7 Reduced to its essence, the Secretary's argument is that his
 8 department, in spite of the Finnegan decision, should be allowed to
 9 make initial determinations of the continuing eligibility for SSI
 10 benefits of grandfathers. This court finds that Finnegan con-
 11 trols. The SSA must follow the Ninth Circuit's decision within
 12 this jurisdiction. Jones & Laughlin Steel v. Marshall, 636 F.2d 32
 13 (3d Cir. 1980); ITT World Communications v. FCC, 635 F.2d 32 (2d
 14 Cir. 1980); Mary Thomson Hospital v. NLRB, 621 F.2d 858 (7th Cir.
 15 1980).

16 ⁴ The Ninth Circuit's standard is not at all extraordinary. See
 17 e.g., Haves v. Secretary of HEW, 656 F.2d 202 (6th Cir. 1981);
 18 Cassiday v. Schweiker, 663 F.2d 745 (7th Cir. 1981); Musgrove v.
 19 Schweiker, No. 81-3936 (E.D. Pa., June 18, 1982); Schisler v.
 20 Schweiker, No. 80-573E (E.D.N.Y., August 11, 1981); Baye v. Secre-
 21 tary of HHS, 78-CV-662 (N.D.N.Y., April 18, 1981); Buqa v. Califano,
 22 No. C-2-78-541 (E.D. Ohio, May 25, 1979); Luke v. Schweiker,
 23 No. E80-0083(c) (S.D. Miss., Sept. 15, 1981); Messano v. Mathews,
 24 Unemp. Ins. Rptr., ¶ 15,128 (D. Colo., Jan. 27, 1977); Pine v.
 25 Mathews, Unemp. Ins. Rptr., ¶ 14,709 (D.R.I., March 24, 1976);
 26 Provette v. Richardson, 316 F. Supp. (D.S.C. 1970).

27 ⁵ The Secretary also argues that the burden of establishing both
 28 initial and continuing eligibility for disability benefits rests on
 29 the claimant. Torres v. Schweiker, No. 81-2700 (3d Cir. June 24,
 30 1982); Miranda v. Secretary of HEW, 514 F.2d 996 (1st Cir. 1975).
 31 Those cases do not address the issue presented here and in Finnegan.
 32 Moreover, in Patti v. Schweiker, 669 F.2d 582 (9th Cir. 1982), the
 33 Ninth Circuit recognized that the burden rests with the claimant
 34 but found that that burden was not inconsistent with an improvement
 35 standard. Id. at 587.

1 IT IS ORDERED that defendant's motion for summary judgment is
2 DENIED and plaintiffs' motion for summary judgment is GRANTED.

3 IT IS FURTHER ORDERED that plaintiffs' request for a permanent
4 injunction under the terms of this court's March 12, 1982 order is
5 GRANTED.

6 Adverse administrative decisions against members of the plain-
7 tiffs' class which have been rendered post-Finnegan (April 16,
8 1981), where administrative decisions do not expressly adopt the
9 Finnegan standards are REVERSED.

10 The Clerk of the Court is directed to send uncertified copies
11 of this Order to counsel of record.

12 DATED at Seattle, Washington this 26th day of January, 1983.

13
14
15 
16 BARBARA J. ROTHSTEIN
17 UNITED STATES DISTRICT JUDGE
18
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23
24
25
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27

EXHIBIT D

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

DEC 15 1982
W. J. FUND
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
BY W. J. FUND
DEPUTY CLERK

BEN CHEE,

Plaintiff,

vs.

RICHARD S. SCHWEIKER
Secretary of Health and
Human Services,

Defendant.

No. CIV-82-693-PCT-VAC

O R D E R

This action having come before the Court on plaintiff's Motion to Reverse Administrative Agency Decision, deemed a motion for summary judgment, defendant's Response thereto, and defendant's Cross Motion for Summary Judgment, and the Court having considered the memoranda, the record and the exhibits, and the arguments presented at the hearing on December 06, 1982,

IT IS ORDERED that:

1) Plaintiff's Motion to Reverse Administrative Agency Decision is granted. This case is governed by the decision in Finnegan v. Matthews, 641 F.2d 1340 (9th Cir. 1981). Defendant's publication of a ruling of "non-acquiescence" in the Finnegan decision is contrary to law and is of no force or effect. Defendant must abide by the decisions of the courts of the district and circuit in which a claimant resides, and cannot avoid them by statements of "non-acquiescence."

- 2) Defendant's Motion for Summary Judgment is denied.
- 3) Plaintiff's Supplemental Security Income shall be continued, and plaintiff shall be awarded back benefits to the last month in which he received S.S.I. benefits.
- 4) This case is remanded to defendant for implementation of this order.

Done this 14th day of December, 1982.


UNITED STATES DISTRICT JUDGE

RECEIVED
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
DEC 15 1982

EXHIBIT E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
NORTHERN DIVISION

FILED

MAR 2 - 1983

CLINTON HOLLINGSWORTH,
et al.,

Plaintiffs,

v.

RICHARD S. SCHWEIKER, etc.,

Defendant.

EYVON MENDENHALL, CLERK
U. S. DISTRICT COURT
E. DISTRICT OF MO.

No. N81-0035C

ORDER

A memorandum dated this day is hereby incorporated into and made a part of this order.

Having carefully considered the record, the Report and Recommendation of the United States Magistrate, filed December 22, 1982, and the defendant's objections thereto,

IT IS HERESY ORDERED that the aforesaid Report and Recommendation of the United States Magistrate be and the same is sustained, adopted, and incorporated herein. In accordance with said recommendation,

IT IS HERESY FURTHER ORDERED that this action be and it is certified as a class action. The class shall include the named plaintiffs and all applicants for or recipients of Supplemental Security Income benefits voluntarily residing in Missouri nursing home district nursing homes and paying for any services or treatment there who, since August 29, 1979, have been or will be adversely affected by an initial determination,

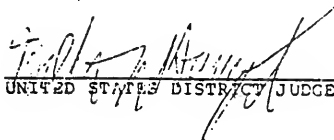
reconsideration, administrative hearing or Appeals Council decision based solely on the grounds that each is an "inmate" or individual living or residing in a "public institution." Fed. R. Civ. P. 23(a), 23(b)(1) and (2).

IT IS HEREBY FURTHER ORDERED that plaintiffs' motion for summary judgment be and the same is granted. Judgment is entered separately.

IT IS HEREBY FURTHER ORDERED that defendant's motion for summary judgment be and the same is denied.

IT IS HEREBY FURTHER ORDERED that plaintiffs Hollingsworth, et al. shall submit a bill of costs and motion for attorney's fees, with affidavits in support thereof, within twenty days of the date of this order.

Dated this 31 day of March, 1983.


UNITED STATES DISTRICT JUDGE

FILED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
NORTHERN DIVISION

MAR 3 - 1983

EYVON MERCENHALL, CLERK
U. S. DISTRICT COURT
E. DISTRICT OF MO.CLINTON HOLLINGSWORTH,
et al.,

Plaintiffs,

v.

RICHARD S. SCHWEIKER, etc.,

Defendant.

No. N81-0035C

MEMORANDUM

This matter is before the Court on various pretrial motions.

Pursuant to 28 U.S.C. § 636(b), this cause was referred to United States Magistrate David D. Noce for all pretrial matters. In response to the Report and Recommendation of the Magistrate, filed December 22, 1982, defendant filed its objections discussed below.

Defendant objects to the reasoning and conclusions in Part IV of the Report and Recommendation pertaining to the merits of plaintiffs' substantive claims. Specifically, defendant asserts that the United States Court of Appeals for the Eighth Circuit would likely adopt the Secretary's revised interpretation of the statutory term "inmate," as set forth in 20 C.F.R. § 416.201, 47 Fed.Reg. 3099 (1982), rather than continue to adhere to that court's previous interpretation in Levinas v. Califano, 604 F.2d 591 (8th Cir. 1979). Upon review of the opinion issued in Levinas, this Court finds the proposition untenable. There

can be no doubt that "[t]he policy underlying the revised regulation is the same policy urged by the defendant Secretary when arguing before the Eighth Circuit [in Levings]." (Magistrate's Report and Recommendation at 21).

Furthermore, the judgment of the court of appeals is binding on all inferior courts and litigants within the jurisdiction of the Eighth Circuit, including an administrative agency such as the present defendant. Allegheny General Hospital v. NLRB, 608 F.2d 965, 970 (3d Cir. 1979); see Hillhouse v. Harris, 547 F.Supp. 88, 92 (W.D. Ark. 1982).

The Court is compelled to conclude, as did the Magistrate, that because Levings has not been reversed by any subsequent decision within this judicial circuit or any decision of the Supreme Court of the United States, the holding in Levings offers the binding statutory meaning to be applied to the present class plaintiffs.

Therefore, defendant's objections notwithstanding, the Court will adopt the Report and Recommendation of the United States Magistrate and grant the relief sought by the plaintiffs.

Dated this 3rd day of March, 1983.


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
NORTHERN DIVISION

FILED

MAR 3 - 1983

CLINTON HOLLINGSWORTH,
et al.,

Plaintiffs,

v.

RICHARD S. SCHWEIKER, etc.,

Defendant.

EVYON MENDELL, CLERK
U. S. DISTRICT COURT
E. DISTRICT OF MO.

No. N81-0035C

JUDGMENT

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that judgment be and the same is entered in favor of plaintiff Clinton Hollingsworth and all similarly situated applicants for or recipients of Supplemental Security Income benefits voluntarily residing in Missouri nursing home district nursing homes and paying for any services or treatment there who, since August 29, 1979, have been or will be adversely affected by an initial determination, reconsideration, administrative hearing, or Appeals Council decision based solely on the grounds that each is an "inmate" or individual living or residing in a "public institution," (Hollingsworth, et al.), and against defendant Secretary of Health and Human Services.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the policy of the Secretary of Health and Human Services, as set forth in SSR 80-11c, 20 C.F.R. § 416.231, denying or terminating Supplemental Security Income benefits to applicants

or recipients who voluntarily reside in Missouri nursing home or health care facilities, established and operated within a nursing home district (Mo. Rev. Stat. § 198.200, et seq.), and who pay for services or treatment provided therein, solely on the basis that such applicant or recipient is an "inmate" or individual living or residing in a public institution, violates the Social Security Act, as codified within 42 U.S.C. §§ 1382(e)(1)(A) and 1383 (c)(3).

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the defendant Secretary of Health and Human Services, his offices, agents, and employees, be and they are enjoined from denying or terminating Supplemental Security Income benefits to the plaintiffs, Hollingsworth, et al., for the sole reason that each is an "inmate" or individual living or residing in a public institution.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the defendant Secretary of Health and Human Services, his offices, agents, and employees, be and they are permanently enjoined from maintaining, enforcing, or otherwise applying SSR 80-11c, 20 C.F.R. § 416.231, or any policies, practices, or rulings which conflict with the opinion set forth in Levings v. Califano, 604 F.2d 591 (8th Cir. 1979), with respect to plaintiffs Hollingsworth, et al.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the defendant vacate and reverse those decisions previously issued denying or terminating Supplemental Security Income

benefits to the plaintiffs based on the sole reason that such person is or was an "inmate" or individual living or residing in a public institution. The defendant is directed to allow and reinstate the Supplemental Security Income benefits of plaintiffs and all similarly situated persons, as previously defined herein.

Dated this 31 day of March, 1983.

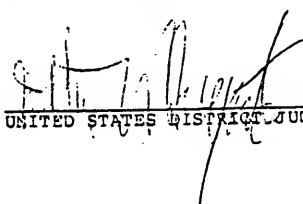

UNITED STATES DISTRICT JUDGE

EXHIBIT F

Testimony of Robert L. Hill, Chairman, Pro Bono Committee, American Corporate Counsel Association and General Counsel, Aetna Life & Casualty Company, on the subject of Legal Services Corporation reauthorization before the House Judicial Subcommittee on Courts, Civil Liberties and the Administration of Justice, April 14, 1983

Mr. Hill.

* * * *

In addition to the assistance received from the local Legal Services Corporation, the Legal Aid Society of Hartford, et cetera, the elderly program also receives support in the way of reference materials, advice and counsel from the national and regional Legal Services Corporation offices including the National Consumer Law Center in Boston and the National Senior Citizens Law Center in Washington, D.C.

* * * *

Rep. Frank.

* * * *

I would like to ask Mr. Hill, I believe, I was impressed with your statement and very much appreciate the work that Aetna is doing, and the others. One part in particular on page 9, that I thought worth commenting on was your reference to the work you have done with the senior citizens law center and the national consumer law center. Would you describe what your relations have been with them, briefly, and how they have been helpful?

Mr. Hill. Yes. In several instances they have sent us lists of material and materials that are available, that they have available and they have put together in sort of a library to handle various types of cases. Landlord and tenant type cases;

Medicare and Medicaid appeals, that type thing. They have also attended several of our pro bono committee meetings and have input in the programs that we are talking about developing. Concerns about guidelines that we should have to make sure that our programs are aimed at the needy and this type of thing. So they have been very helpful as consultants and as people, when we run into sticky problems that we can call on and ask for assistance.

Rep. Frank. You agree that the existence of centers such as this is very valid and important part of an overall legal services program?

Mr. Hill. They have been helpful to us.

Rep. Frank. Thank you. I mention that because as you may know they have been the source of attacks, the backup centers as they are called, and there have been people who have suggested that they ought to be abolished. I think the importance of your point is that there are many people who have called more reliance on the private bar involvement. I must say I am struck by the difference between the way that is described by people who haven't done it and the way it is described by people who have done. And I was very appreciative of your very good description of what the strengths are, what the limitations are, the fact that it is not a substitute, but it is an important supplement. I take it what you are saying is that having the backup centers in fact means that we can take more advantage of the corporate counsel who are willing to come in. But the backup centers in fact -- leverage

those private contributions, by helping with this process of alerting people and informing people about what is happening. I was struck also-- you noted that you said there had to be training programs, because we have had people kind of poo-poo the idea that there was any specialized knowledge required about the kind of work legal services lawyers do. I take it as someone fairly experienced in the corporate law field that you don't agree that it is something that you just walk in on like that.

Mr. Hill. No--I don't think--

Rep. Frank. Can you get that in the record?

Mr. Hill. You can find 22 attorneys in our program that would certainly agree with that. They would feel lost without the seminars and training sessions we have. It's just--

Rep. Frank. I appreciate that. As you say, the backup centers are important and that this isn't simply something you waltz in and do. I think we have benefited very much from what you have had to say, and I appreciate it.

EXHIBIT G

American Bar Association

RESOLUTION ON STATE SUPPORT

Adopted by
Standing Committee on Legal Aid
and Indigent Defendants

WHEREAS, the Legal Services Corporation and its predecessor, the Office of Equal Opportunity, have regularly provided special resources to local legal services programs for the purpose of a coordinated state support program; and

WHEREAS, the concept of state support encompasses a variety of activities, including direct consultation and planning with the organized bar at the state and local levels, training on poverty law issues for legal services workers and private attorneys, development of private bar pro bono publico efforts, coordination of local project activities, technical assistance to local programs, centralized advocacy, data gathering, information dissemination, brief bank maintenance, legal manual preparation, and other similar functions; and

WHEREAS, the continuation of state support is viewed as an integral component of an effective, efficient system of delivering high quality legal assistance to low income persons and a valuable resource to private attorneys providing legal services to the poor.

NOW THEREFORE, BE IT RESOLVED, that state support activities should continue to be determined as to needs, character and quality of service and to be conducted on a local basis and should be strengthened and that funding should not arbitrarily be reduced by the Legal Services Corporation at the national level;

Adopted the 6th day of February, 1983, in New Orleans, Louisiana.

Robert D. Raven,
Chairman

3146T

STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS

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Alliance for Legal Rights, Inc.

APPENDIX 10

STATEMENT OF
ALLIANCE FOR LEGAL RIGHTS, INC.

BEFORE THE
COMMITTEE ON LABOR
AND HUMAN RESOURCES

UNITED STATES SENATE

May 4, 1983

Board of Directors:

President: George W. Moore
New York, New York

Secretary: Ann Bailey
East Long Meadow, Massachusetts

Treasurer: Dorothy A. Richardson
Pittsburgh, Pennsylvania

Mary-Louise K. Butler
St. Louis, Missouri

Maryellen H. Hamilton
New Orleans, Louisiana

Laura de Jesus
Fajardo, Puerto Rico

Mary R. Lanier
Washington, D.C.

Ellsworth Morgan
Newark, New Jersey

Mary Wright
Rapid City, South Dakota

Mr. Chairman and Members of the Senate Labor and Human Resources Committee, I am George Moore, President of the Alliance for Legal Rights, Inc. (ALR). We appreciate the opportunity to present written testimony on the reauthorization of the Legal Services Corporation.

The Alliance for Legal Rights is a national organization for clients of legal services -- those who actually need as well as use the services. The Alliance was formed two years ago when it became clear that the Reagan Administration was determined to abolish federally-funded legal assistance for poor people. Since its incorporation, the Alliance has attracted a following of over 600 legal services clients across the country who have since established contacts with organizations in their communities, their Members of Congress, the media, and others to explain the vital need to continue the federally-funded legal services program.

It is, indeed, highly appropriate to present the client's viewpoint of legal services, since only clients of legal services can give a true picture of why legal services programs are needed to assist poor people in matters which affect their lives. The continuation of the Legal Services Corporation, the funding of legal services programs, the delivery systems used for these services to poor people, and above all, the quality of the services that are delivered are crucially important to us.

First, let us consider the country in which we live and our overall governmental process. We have developed a society and a form of government that is based on the law. Every aspect of our lives, whatever our economic status, race, sex, religion, is based and controlled by laws and regulations. Theoretically, we as citizens of this society vote for our representatives --state, local, national -- who, in turn, make the laws under which we live, are governed, and protected. These representatives are expected to make laws reflecting and responding to the needs of the constituency that voted them into office regardless of their economic status.

The second part of this theory of government is that all citizens, to make this form of government work, must have access to the law. Since this form of government is based on the law, then all of its citizens must have access to the legal system to protect their rights and redress grievances. This is an essential part of our democratic government process. Without access to the law, low-income citizens, because of their economic conditions, are denied basic rights and equal justice under the law; this amounts to tyranny not democracy.

Poor clients in this country find it difficult; in fact, they find it impossible to reconcile the lofty ideals of the American Dream with abused hungry children, unemployment, slum lords, meager pension checks, high utility bills and shut offs -- all this without relief. Legal services lawyers assist us by giving us access to the law to protect and enforce our rights.

Denial of legal representation creates a second class citizenship in our society. For those able to afford justice and those unable to afford it. We need attorneys zealously defending and representing the low-income community.

In 1982, LSC was able to fund 325 legal services programs. These programs served an estimated 1.2 million people who would otherwise not be able to afford lawyers to help them with their problems. While, at first glance, this may appear to meet the legal assistance needs of the poor persons, in fact, it does not. There are an estimated 30 million poor people in America, and a recent study has concluded that in any given year, about 23% of them are faced with a legal problem. Obviously, not all of these 6.9 million poor people may even know of the availability of free legal services, but the fact remains that the demand for legal services is enormous. The saddening reality is that budgetary limitations as well as restrictions on the legal activities and forums, dictate that many applicants must be turned away.

Clients were not jubilant when we learned that LSC's fiscal year 1983 appropriation was \$241 million. We understood, as we had come to understand previously, that this cut in funding over prior years funding levels would be a serious disadvantage. We knew local legal services programs would be forced to shut-off intake of new clients in order to preserve quality representation for the vast number of clients already accepted.

Typically, legal services clients are beset by an array of housing, consumer, and domestic problems, which, if not promptly resolved, could produce further economic and social turmoil,

often leading to devastation of the family. It is unacceptable to have poor people consigned to such suffering simply because the national legal services program remains underfunded and programs in their communities do not have the resources with which to serve them.

This nation has unyieldingly held out the proposition to all of its people that our system of justice is oblivious to such distinctions as race, sex, and income. Prior to the inception of the national legal services program, poor people were very skeptical of the ability of our nation to deliver more than the rhetoric about equal justice. However, through our contacts with legal services programs, many of us have come to believe that we can resolve our grievances through the judicial system and that the words "equal justice" do have meaning. Any significant cut in LSC's budget at this time would have a tremendously negative effect upon the confidence the poor have in our legal system. I suggest to this Committee that the despair which would result among low-income people would not be worth the minute savings to the federal budget. That is why the Alliance for Legal Rights urges this Committee to authorize the Legal Services Corporation for an additional three years at \$296 million for fiscal year 1984 and such sums as may be necessary for the succeeding two years. Even with a budget of \$296 million -- which represents a modest increase over the fiscal year 1983 budget -- legal services for the poor cannot attain its maximum effectiveness because of inflationary factors. However, it will allow some continued increase in effectiveness.

What clients have seen over the past two years has been extremely unsettling. In many cases, legal services offices conveniently located in communities have been forced to close, requiring clients to assume additional transportation expenses to get to those offices which remain open. In other instances, legal services attorneys who would ideally serve all applicants for assistance have been forced to turn away poor people whose problems do not constitute dire emergencies. In still other instances, the backlog of unfinished cases is so tremendous that some offices are not accepting any new cases at all.

There has been much recent discussion surrounding the involvement of private lawyers and bar associations in the delivery of legal services to poor people. Specific efforts have been made to introduce these attorneys to the range of delivery models which might be used in a given community. While we certainly encourage private attorneys to provide the help we need through pro bono and reduced fee programs, the reality of the situation is that there is a vacuum which needs to be filled right now. We cannot wait for two or three years until these private bar programs are fully operational, particularly when, based upon what we know now, only 10% of the private attorneys in this country can be expected to participate. Again, we cannot conceive of the private bar as a resource in some of our rural communities where private lawyers are in such short supply that often the legal services programs are themselves the largest law firms.

Since the national legal services program was begun in 1965, many of us have truly come to believe that our grievances can be resolved through the judicial system and that the words "equal justice" do have meaning. We know that during these years legal services has been the subject of considerable controversy. Everything that legal services lawyers do is not appreciated by everyone. We trust, however, that the authorization process will not be used as a means emasculating effective representation in an effort to resolve what some people may feel are weaknesses in the legal services program. The only purpose that serves is to make poor people suffer more.

We are particularly concerned about the limitations and restrictions placed on the representation of eligible clients by legal services programs. We view these restrictions as limitations on our access to justice and inconsistent with the purposes of the Act. We ask that the Committee remove all restraints but recognize the improbability of such actions. Therefore, in the alternative, we ask that no further restrictions be imposed. New restrictions on legislative representation, class action litigation, and the representation of aliens will only further undermine, in our belief, the protection of our rights and also our confidence in the viability of resolution of disputes within our system of justice.

We are concerned about a series of troublesome aspects to the employment practices at the central Corporation including:

1. showing an insensitivity to affirmative action and equal employment opportunity issues;

2. making decisions and taking actions without consulting persons who have knowledge of, or special insights into, particular situations;
3. applying an ideological and partisan political test to staffing decisions;
4. ignoring long-term LSC personnel procedures; and
5. sending a conscious or unconscious message to the legal services community that professionally competent staff who have given long service to LSC will not be accorded even a modicum of respect or common decency when the decision is made to replace them.

We hope that you will use your authority to investigate these concerns and help restore the capacity of the central Corporation to exert knowledgeable and creative leadership for the full community.

In summary, the Alliance for Legal Rights urges this Committee to act favorably upon the Legal Services Corporation's authorization at the highest funding level and without further restrictions in the legal forums in which we may be represented and type of representation we may receive.

We thank you for this opportunity to present our views.

JIMMY DAVIS
COUNTY-DISTRICT ATTORNEY

(806) 647-4445



100 BEDFORD ST. EAST
DIMITT, TEXAS 79027-8485

CASTRO COUNTY
DIMITT, TEXAS

May 2, 1983

EXPRESS MAIL
RETURN RECEIPT REQUESTED

The Honorable Orrin Hatch
Chairman
Committee on Labor & Human Resources
United States Senate
Washington, D. C. 20510

RE: Legal Services Corporation

Dear Mr. Chairman:

The Senate Committee on Labor & Human Resources will consider the matter of funding for Legal Services Corporation on Wednesday, May 4, 1983. Castro County has had unfortunate experiences with one group funded by Legal Services Corporation. That particular group is Texas Rural Legal Aid. Texas Rural Legal Aid has not concerned itself with giving poor people equal access to justice and the legal system. This group has concentrated its efforts in "social legislation" and attempted to determine economic and social benefit to certain migrant groups. These efforts have actually harmed the people that Texas Rural Legal Aid intended to represent.

Texas Rural Legal Aid has refused to practice in the State Courts. Virtually every case that has been filed by this organization has been a Class Action Suit in U. S. District Court. Texas Rural Legal Aid lawyers have refused to represent migrants, indigents, minorities, or anyone else on criminal matters, divorces, child custody disputes, child support payment matters, or any of the more usual type legal problems. These problems are matters that effect all people regardless of income. Migrants and indigents could have received legal services through the federally funded Legal Services Corporation program had it not been for the decision of Texas Rural Legal Aid to seek sensational and provocative litigation.

Texas Rural Legal Aid has concerned itself in this area with strikes, union activity, and the legal rights of illegal aliens. There have been published newspaper photographs of Texas Rural Legal Aid attorneys in apparent participation and leadership of union strikes,

in direct violation of the charter of Legal Services Corporation. These charges have been denied by Texas Rural Legal Aid, and Texas Rural Legal Aid has contended that their attorneys were "advising" the various persons involved in the union strike. Texas Rural Legal Aid has sued the adjoining county (Deaf Smith County) and has sought to involve the surrounding counties in a suit involving allegations against the Immigration and Naturalization Service and the Texas Department of Public Safety involving the questioning and detention of suspected illegal aliens. This suit has not been litigated and Castro County has not been involved in this suit.

Texas Rural Legal Aid filed litigation against Castro County in 1979 which forced a redistricting plan before the 1980 elections. No preliminary complaint was ever filed with local officials. Texas Rural Legal Aid also joined forces with Southwest Voter Registration Project and the Mexican-American Legal Defense Fund to file similar suits against at least 12 Texas counties at approximately the same time. Castro County was forced to spend more than \$50,000.00 in attorneys' fees on this particular matter. Approximately \$30,000.00 was spent to pay the three groups, including Texas Rural Legal Aid, for their attorneys' fees and expenses on this particular matter.

Texas Rural Legal Aid also filed a Class Action suit against our local hospital in Dimmitt, Texas regarding the alleged denial of emergency services to the family of a child who died in Castro County in 1978. This particular litigation is still continuing and has cost a great amount of tax dollars to defend this particular action. Texas Rural Legal Aid has also filed a vast number of minimum wage claims against farmers in this area. During much of this litigation, Texas Rural Legal Aid has successfully sought major media coverage.

Texas Rural Legal Aid also filed a major suit against the local housing authority in Castro County. Once again, no major effort was made to settle the dispute and resolve the grievances prior to the litigation being filed in U. S. District Court. The housing project was later donated to the lender, Farmers Home Administration. The net result has been a substantial loss in the total amount of temporary housing available for migrant workers.

A new article entitled "Refine, Don't Destroy Legal Services" which appears in the May, 1983 issue of the American Bar Association Journal discusses the problems involved in the Legal Services Program. In that article, Mr. Duley and Mr. Houseman indicate that "Legal Service agencies and attorneys should be careful that the ends sought by their representation will provide true benefits to the poor, because the risk of harming, rather than helping, poor people is real." That situation has occurred in Castro County. Instead of helping migrants and indigents, Texas Rural Legal Aid has caused many employment opportunities to disappear. Prospective employers and potential industry for the area has been harmed because of the social activists which are connected with Texas Rural Legal Aid. The net effect, in opinion, is that poor people have been hurt and not helped. Poor people have some of the same legal problems which are experienced by

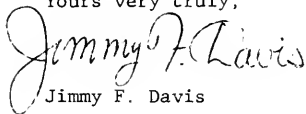
Legal Services Corporation

page 3

more prosperous people in our society. These problems could be successfully addressed by the Legal Services Corporation, if it were not for the fact that groups such as Texas Rural Legal Aid have determined to seek media coverage and promote their own organization rather than to help solve the more typical problems of the migrants, minorities and indigents of our area.

I appreciate the opportunity to share these observations with your Committee. The money which has been allotted to Legal Services Corporation could be used in a proper and helpful manner if restrictions and safe guards were applied. I appreciate the work which your Committee is trying to do, and thank you for the opportunity to have these opinions considered.

Yours very truly,

A handwritten signature in cursive script that reads "Jimmy F. Davis". The signature is written in dark ink and is positioned above the printed name.

Jimmy F. Davis

JFD/jh



LEGAL SERVICES CORPORATION OF IOWA

CENTRAL OFFICE

315 East Fifth • Suite 22 • Des Moines, Iowa 50309
(515) 243-2151

or

Toll Free 1-800-532-1275

6 May 1983

RECEIVED MAY 12 1983

The Honorable Orrin Hatch, Chairman
Senate Labor & Human Resources Committee
Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Hatch:

I have been advised that during a recent subcommittee meeting, you criticised my program specifically and me by name in connection with a case involving Medicaid coverage of a transsexual's surgical treatment.

My purpose in writing to you is to request your assistance in setting the record straight. As I understand it, you made reference to the case as being unimportant and implied, furthermore, that it was brought by the Legal Services Corporation of Iowa (LSCI) 'at the same time John Barrett says his program' was able to take only one of every two applicants for legal assistance. (I regret that I must operate without the benefit of a transcript of your remarks, but I believe this is a reasonably accurate paraphrasing).

It is unfortunate that you or your informants did not take the trouble to contact me or to check more thoroughly into the actual facts of the matter. Had you done so, you would have learned that the case you refer to was filed by a county legal aid program which was entirely funded by county money. You also would have learned that the case was accepted by that program in 1976, fully a year before LSCI was created and about eighteen months before I was hired as LSCI's first director.

The case later became known as Pinneke v. Preisser. It was begun by Cerro Gordo County Legal Aid Society, a program controlled by the county board of supervisors and the county bar association. At the time this suit was

LSCI BRANCH OFFICES

Cedar Rapids • Council Bluffs • Davenport • Des Moines • Dubuque • Iowa City
Mason City • Ottumwa • Sioux City • Waterloo

filed, Cerro Gordo County Legal Aid Society was receiving no federal funds from any source.

About a year after the case began, LSCI was created. We then began an intensive effort to expand throughout the state of Iowa, trying to establish fifteen offices in time to meet the Congressionally-mandated "minimum access" goal. Under an agreement negotiated by a Governor's committee and chaired by the Chief Judge of the Iowa Court of Appeals, LSCI was obligated to offer a "merger" opportunity to each locally-funded legal aid office as this expansion effort reached out to new parts of the state.

Accordingly, in mid-1978 I began discussions with officials of Cerro Gordo county over the possibilities of a merger in Mason City. Eventually, it was agreed to with two provisos which are pertinent here. One was that LSCI would accept full responsibility for completing all pending cases then being handled by the county legal aid office. Another was that for at least two years, the county board of supervisors would continue to appropriate \$15,000 per year to assist us in that effort.

Among the pending cases which we thus inherited was Pinneke v. Preisser, then set for trial in the United States District Court. Eventually, a decision was rendered and it was favorable to the client's position. By that time, of course, LSCI had been substituted as attorneys of record.

Shortly thereafter, the State of Iowa appealed the decision to the Eighth Circuit Court of Appeals. Still operating under the terms of the merger agreement and using funds being appropriated for this purpose by Cerro Gordo County, we defended the district court decision. The appeals court sustained the lower court's decision and the State's appeal was dismissed on the merits. A copy of that opinion is enclosed with this letter for your benefit.

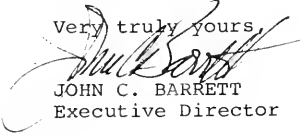
I know that you have in the past advocated for substantial local control of legal aid programs. In this instance, at least, it was just such local control that led to the filing of the Pinneke case. The appeal taken in 1979 and decided in 1980, of course, was the responsibility of the State. In losing that appeal, the State was required to reimburse LSCI for our costs and time expended.

Hon. Orrin Hatch
May 6, 1983
Page Three

In summary, if I have heard an accurate rendition of your remarks about me and LSCI, then I believe the record should be corrected and an apology given. The Pinneke case was filed by a locally-funded legal aid program well before the creation of LSCI. It was assumed by LSCI only as part of a merger, under the terms of a planning document developed by a Governor's committee. It was finished by LSCI once we had to accept continuing responsibility for the case, but with the assistance of an annual grant from the county given in part to help complete all pending cases which LSCI assumed from Cerro Gordo County Legal Aid Society.

Any implication that this case was filed by LSCI, or reflects substantive priorities of LSCI, or was in any way the cause of LSCI not being able to accept other cases is simply unfounded and contrary to fact.

Very truly yours,



JOHN C. BARRETT
Executive Director

/cb

ENCL.

cc: Ranking Minority Member

LITTLER, MENDELSON, FASTIFF & TICHY

A PROFESSIONAL CORPORATION

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SAN DIEGO, CALIFORNIA 92101
(619) 232-0441

May 17, 1983

Kevin McGuiness, Counsel
Committee on Labor and Human
Resources
United States Senate
Washington, D.C. 20510Re: Legal Services Corp. Hearings Of May 4, 1983

Dear Mr. McGuiness:

I have been informed that the Senate Labor and Human Resources Committee is in the process of reviewing certain practices of the Legal Services Corporation. Recently, our law firm was involved in litigation against two California agencies which receive substantial federal funding from the Legal Services Corporation. I believe that the activities by those agencies clearly demonstrate abuses of which the Committee should be made aware.

I have enclosed copies of the letters which I wrote last year to certain government officials seeking correction of the abuses. To date, I have not received any indication that corrective action was taken on these matters.

I urge that the Committee incorporate my letters to Messrs. Orrin G. Hatch, Henry A. Waxman, Thomas Lantos, David Stockman and Jack Brooks in the record of proceedings before it, and that the Committee consider these matters in its review of the activities of the Legal Services Corporation.

Very truly yours,

Wesley S. Fastiff

WJF/sm

ARTHUR MENDELSON
WESLEY J. FASTIFF
GEORGE J. TICHY, JR.
J. RICHARD THESING
ALLEN W. TEAGLE
ROBERT H. LIEBER
JORDAN L. BLOOM
WILLIAM C. WRIGHT
DARRYL G. NATHANSON
ALAN B. CARLSON
RICHARD H. HARDING
ALAN S. LEVINS
JOHN T. HAYDEN
RANDOLPH C. ROEDER
MAUREEN E. NEULAN
DARYL P. SCHOLICK
ROBERT F. WILLMAN
WILLIAM F. TERHETDEN
KAREN HANLEY HENRY
NANCY L. OBER
LAWRENCE J. GARTNER
RICHARD J. LOFTUS, JR.
LARRY R. SCHARF
MICHAEL J. HODMAN
NACHI YOUNG
JOHN W. SACHNERG
ROBERT D. MUELTENG
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R. BRIAN DIXON
ROBERT S. CARROLL
HENRY D. LEDERMAN
PAULA CHAMBRIDGE

PATRICIA R. WHITE
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FLODY J. PALMER
LAREN E. FORD
MICHAEL S. MARGOLIS
DEBRA WOODHOUSE
SPENCER H. HIPP
GREGORY W. MCCLUNE
MICHAEL B. RICCIARIELLO
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JUDY S. COFFIN
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SCOTT A. WILSON
M. FRANKLIN NICHOLS, III
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LINDERSON RORTER, JR.
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CHARLOTTE ADDINGTON
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SANDRA B. KLOSTER
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KEVIN R. CIOGLARIAN
JEFFREY M. TANENBAUM
ROBERT P. STRICKER
DONALD H. HARTFORD, JR.
SAMUEL F. HOFFMAN
CAROL R. CAINE
RICHARD S. FALCONE

*ADMITTED IN STATES OTHER THAN CALIFORNIA

August 31, 1982

The Honorable Orrin G. Hatch
The United States Senate
Russell Building, Room 125
Washington, D. C. 20510

Dear Senator Hatch:

I am writing this letter to inform you of a flagrant misuse of federal funds which I believe violates federal statute, violates the administration's current budget-tightening efforts, and improperly deprives truly deserving citizens of federal assistance which they desperately need.

Our law firm represents West Foods, Inc., a grower of mushrooms in California. In the summer of 1981, West Foods' collective bargaining agreement with the United Farm Workers Union expired, and in November of that year, the employees went on strike. Despite the fact that the employees voluntarily refused to accept work which was available, and despite the fact that under California law employees who strike are disqualified from receiving unemployment benefits, the employees filed unemployment insurance claims with the State of California. The State denied these claims. Claimants, through their union, the United Farm Workers, then appealed the denial of benefits to the California Unemployment Insurance Appeals Board, the State agency authorized to determine such matters. The matter is now pending before the CUIAB. Any decision by the CUIAB is subject to appeal in the state court system.

Despite the pendency of proceedings before the CUIAB, California Rural Legal Assistance (CRLA), and Channel Counties Legal Services Association, Migrant Component (CCLSA) -- two agencies which receive substantial federal funding from the Legal Services Corporation -- recently

sought a writ of mandate before the California Superior Court. In this action, the two agencies requested the Court to direct the CUIAB to pay benefits despite the pendency of the CUIAB proceedings.

The action brought by the agencies is patently frivolous for several reasons. First, writs of mandamus are available in California only where administrative remedies do not exist or have been exhausted, and only where a final order exists. Clearly, the agencies are attempting to avoid the administrative process which is fully capable of resolving the matter. Second, the type of relief sought by the agencies is available only where there is irreparable harm shown. The harm claimed by the agencies -- the unemployment of the various claimants -- is directly attributable to the claimants' own refusal to accept work which has been repeatedly offered by the company. Thus, any harm suffered by the claimants was due to their own actions.

The Superior Court summarily dismissed the agencies' petition for writ of mandate, as did the Court of Appeal on review of the lower court's decision. Learning nothing from the actions of both the Superior Court and the Court of Appeal, however, the agencies have now appealed to the California Supreme Court. That matter is now pending.

A more wasteful expenditure of federal funds could hardly be imagined. At a time when the federal budgetary deficit is well in excess of 100 billion dollars, and every agency is being scrutinized to ensure efficient operation, it is truly appalling that tax revenue is being spent in this manner. The claimants are fully represented by their own union and its extensive legal staff and they have the full panoply of protections afforded by the California administrative and judicial process. Despite the existence of those protections, the CRLA and CCLRA have embarked on a quixotic and utterly wasteful campaign to avoid that process. The magnitude of the waste is shown in the fact that the petition filed with the Superior Court was 35 pages long and was supported by over 350 pages of argument and declarations. In the proceedings before the appellate court, the agencies filed a 47-page petition and over 600 pages of exhibits. The cost to the taxpayers in attorney time alone in preparing these documents must be staggering.

Perhaps the most appalling aspect of the matter is that the use of any federal funds was totally unnecessary since the claimants are all represented by the United Farm Workers Union and have the extensive resources of the UFW's legal staff at their disposal. In fact, UFW representatives presented the claimants' case before the Unemployment Insurance Appeals Board hearing on the matter. This was not, therefore, a case when citizens would have been deprived of legal representation unless there had been federal assistance. It was, rather, a totally unnecessary expenditure of federal funds at a time when fully competent legal representation was already available.

I submit that the CRLA and CCIFA have made the strongest possible argument for reduced funding of the Legal Services Corporation. Vexatious and wasteful litigation of this type only siphons much needed tax dollars away from underprivileged citizens with genuine needs.

I urge you to investigate this flagrant abuse of federal funds and to cause its immediate cessation.

Very truly yours,

WESLEY J. EASTIFF

WJP:kc

August 31, 1982

The Honorable Henry A. Waxman
The House of Representatives
Rayburn House Office Building, Room 2418
Washington, D. C. 20515

Dear Congressman Waxman:

I am writing this letter to inform you of a flagrant misuse of federal funds which I believe violates federal statute, violates the administration's current budget-tightening efforts, and improperly deprives truly deserving citizens of federal assistance which they desperately need.

Our law firm represents West Foods, Inc., a grower of mushrooms in California. In the summer of 1981, West Foods' collective bargaining agreement with the United Farm Workers Union expired, and in November of that year, the employees went on strike. Despite the fact that the employees voluntarily refused to accept work which was available, and despite the fact that under California law employees who strike are disqualified from receiving unemployment benefits, the employees filed unemployment insurance claims with the State of California. The State denied these claims. Claimants, through their union, the United Farm Workers, then appealed the denial of benefits to the California Unemployment Insurance Appeals Board, the State agency authorized to determine such matters. The matter is now pending before the CUIAB. Any decision by the CUIAB is subject to appeal in the state court system.

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I submit that the CRLA and CCISA have made the strongest possible argument for reduced funding of the Legal Services Corporation. Vexatious and wasteful litigation of this type only siphons much needed tax dollars away from underprivileged citizens with genuine needs.

I urge you to investigate this flagrant abuse of federal funds and to cause its immediate cessation.

Very truly yours,

WESLEY J. FASTIFF

WJF:kc

August 31, 1982

The Honorable Thomas Lantos
The House of Representatives
Longworth House Office Building, Room 1123
Washington, D. C. 20515

Dear Congressman Lantos:

I am writing this letter to inform you of a flagrant misuse of federal funds which I believe violates federal statute, violates the administration's current budget-tightening efforts, and improperly deprives truly deserving citizens of federal assistance which they desperately need.

Our law firm represents West Foods, Inc., a grower of mushrooms in California. In the summer of 1981, West Foods' collective bargaining agreement with the United Farm Workers Union expired, and in November of that year, the employees went on strike. Despite the fact that the employees voluntarily refused to accept work which was available, and despite the fact that under California law employees who strike are disqualified from receiving unemployment benefits, the employees filed unemployment insurance claims with the State of California. The State denied these claims. Claimants, through their union, the United Farm Workers, then appealed the denial of benefits to the California Unemployment Insurance Appeals Board, the State agency authorized to determine such matters. The matter is now pending before the CUIAB. Any decision by the CUIAB is subject to appeal in the state court system.

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I urge you to investigate this flagrant abuse of federal funds and to cause its immediate cessation.

Very truly yours,

WESLEY J. PASTIFF

WJF:kc

August 31, 1982

Mr. David Stockman
Director of Office of Management & Budget
Executive Office Building
Washington, D. C. 20503

Dear Mr. Stockman:

I am writing this letter to inform you of a flagrant misuse of federal funds which I believe violates federal statute, violates the administration's current budget-tightening efforts, and improperly deprives truly deserving citizens of federal assistance which they desperately need.

Our law firm represents West Foods, Inc., a grower of mushrooms in California. In the summer of 1981, West Foods' collective bargaining agreement with the United Farm Workers Union expired, and in November of that year, the employees went on strike. Despite the fact that the employees voluntarily refused to accept work which was available, and despite the fact that under California law employees who strike are disqualified from receiving unemployment benefits, the employees filed unemployment insurance claims with the State of California. The State denied these claims. Claimants, through their union, the United Farm Workers, then appealed the denial of benefits to the California Unemployment Insurance Appeals Board, the State agency authorized to determine such matters. The matter is now pending before the CUIAB. Any decision by the CUIAB is subject to appeal in the state court system.

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August 31, 1982

The Honorable Jack Brooks
The House of Representatives
Rayburn House Office Building, Room 2470
Washington, D. C. 20515

Dear Congressman Brooks:

I am writing this letter to inform you of a flagrant misuse of federal funds which I believe violates federal statute, violates the administration's current budget-tightening efforts, and improperly deprives truly deserving citizens of federal assistance which they desperately need.

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I urge you to investigate this flagrant abuse of federal funds and to cause its immediate cessation.

Very truly yours,

WESLEY J. WESTIFF

WJF:kc

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The Superior Court summarily dismissed the agencies' petition for writ of mandate, as did the Court of Appeal on review of the lower court's decision. Learning nothing from the actions of both the Superior Court and the Court of Appeal, however, the agencies have now appealed to the California Supreme Court. That matter is now pending.

A more wasteful expenditure of federal funds could hardly be imagined. At a time when the federal budgetary deficit is well in excess of 100 billion dollars, and every agency is being scrutinized to ensure efficient operation, it is truly appalling that tax revenue is being spent in this manner. The claimants are fully represented by their own union and its extensive legal staff and they have the full panoply of protections afforded by the California administrative and judicial process. Despite the existence of those protections, the CRIA and CCISA have embarked on a quixotic and utterly wasteful campaign to avoid that process. The magnitude of the waste is shown in the fact that the petition filed with the Superior Court was 35 pages long and was supported by over 350 pages of argument and declarations. In the proceedings before the appellate court, the agencies filed a 47-page petition and over 600 pages of exhibits. The cost to the taxpayers in attorney time alone in preparing these documents must be staggering.

Perhaps the most appalling aspect of the matter is that the use of any federal funds was totally unnecessary since the claimants are all represented by the United Farm Workers Union and have the extensive resources of the UFW's legal staff at their disposal. In fact, UFW representatives presented the claimants' case before the Unemployment Insurance Appeals Board hearing on the matter. This was not, therefore, a case when citizens would have been deprived of legal representation unless there had been federal assistance. It was, rather, a totally unnecessary expenditure of federal funds at a time when fully competent legal representation was already available.

I submit that the CRJA and COLSA have made the strongest possible argument for reduced funding of the Legal Services Corporation. Vexatious and wasteful litigation of this type only siphons much needed tax dollars away from underprivileged citizens with genuine needs.

I urge you to investigate this flagrant abuse of federal funds and to cause its immediate cessation.

Very truly yours,

WESLEY J. EASTIFF

WJF:kc

Mountain States Legal Foundation

MAXWELL A. MILLER
Senior Attorney

Testimony before the Senate Committee on Labor
and Human Resources

May 4, 1983

My name is Maxwell Miller. I am presently employed as a senior attorney for the Mountain States Legal Foundation, a public interest law firm headquartered in Denver.

In April of last year, I recommended to a Senate Subcommittee on Appropriations¹ that the Legal Services Corporation Act² be amended to establish for the first time a means of outside, impartial and practical enforcement of the Act's restrictions against political activity. My testimony was premised upon personal experiences with legal services programs, both as an insider and an outsider. From these same perspectives, I again recommend to you that aggrieved persons be given a cause of action against the Corporation and its grantees for violating the Act's prohibitions against diverting public funds for political ventures.

As an insider, I was managing attorney of the Provo, Utah office of Utah Legal Services from March of 1977 to November of 1978. Our office handled mostly routine cases, meaning that they usually turned upon factual disputes within established parameters of state and sometimes federal law. These cases involved disputes in domestic relations, consumer transactions, landlord-tenant, public benefits, and juvenile.³ Most field offices throughout the country were like mine in providing access to the judicial system for the nation's poor in such

routine matters. Though perhaps non-glamorous to legal services lawyers, such cases often determined critical issues in the lives of clients affected: whether a mother would have her child placed in a foster home, whether a disabled man would receive a social security check; whether someone was given due process before commitment to a mental institution. Of course, everyone along the political spectrum would consider these services admirable and necessary. That is what legal services lawyers are supposed to do.

To recognize that legal services programs help the poor, however, is not to suggest that they are wholly virtuous or that we ought to disregard serious blemishes because the program's heart remains pure. I also observed, as an insider, that programs used public funds to promote political causes espoused by their leaders, in total disregard of the Act's prohibitions and the individual routine cases Congress intended them to handle. Cases were thus selected according to their perceived social utility. Where this view prevailed, "[a]ccess to legal aid in and of itself [was] seen as an empty shell, important only because law [was] viewed as a method of promoting social change."⁴ I often heard it argued that reforming the law in the name of the poor was more effective than providing access to the judicial system. It is better to fill a hole, runs the argument, than to keep pulling people out

of one. While there is nothing inherently wrong with that thinking, how best to fill a hole is usually a policy question legal services lawyers are neither elected nor paid to answer. Taxpayer dollars should not support partisan political action.

As an outsider, and as a lawyer for the Mountain States Legal Foundation, I represented five United States Senators, one United States Congressman, and an Iowa State Senator in a lawsuit against the Legal Services Corporation and the Legal Services Corporation of Iowa which was filed in 1981 in the United States District Court for the District of Iowa.⁵ Our plaintiffs complained that the Corporation had spearheaded and funded a massive political movement in violation of the Act. Some of the evidence we amassed to support our claim was submitted in my previous testimony and included such items as: 1) interoffice memoranda written by high officials in the Corporation urging recipients to lobby Congressmen;⁶ 2) transcripts from a legislative advocacy seminar where speakers openly described the Corporation's goal as "meaningful welfare reform [and] . . . meaningful redistribution of wealth;"⁷ and 3) flyers printed by Legal Services recipients and others evincing an effort to organize political coalitions.⁸

There has been an avalanche of examples coming to my attention since our lawsuit was filed. For instance, in an editorial written for the Wall Street Journal, Professor Gerald Caplan, former acting president of Legal Services Corporation, described additional horrors in the parade. Caplan writes:

The political character of the program is most clearly revealed through its publications. The lead article of a 1982 issue of Youth Law News declares: "Once again, President Reagan's proposed budget declares war on our nation's children. Apparently, Reagan chooses to blame welfare recipients . . . for the economic woes of the United States."

In another corporation-funded periodical, the Economic Development Law Center Report, a Legal Services attorney argues: "We must recognize and strengthen the natural links between working people and the poor If we have not helped our clients to increase their political and economic resources, we have failed."

And the newsletter of the National Health Law Program advises: "If you have eligible clients who will be affected by [proposed cutbacks] the most effective thing they can do for themselves is to contact as many senators and representatives. . . . as possible."⁹

Despite volumes of similar evidence, the court dismissed our case because "Congress, in enacting the Legal Services Corporation Act of 1974, did not intend to create an implied cause of action."¹⁰ Essentially, the court said it could do nothing to stop the Corporation's unlawful use of taxpayer dollars, even if our allegations of wrongdoing were taken as true. The upshot of the decision was to throw the responsibility for restraining the Corporation back to

Congress. If there is ever to be an effective restraint against the Corporation's misuse of taxpayer dollars, Congress must provide one.

Yet Congress has not. It has, instead, simply restated the prohibitions against political activity, with perhaps firmer language, but with the same historically unfounded reliance upon the Corporation and its recipients to police themselves. The sole effort to amend the Act and provide for a citizen cause of action has not been taken seriously.

In April 1982, Senator Steve Symms of Idaho introduced a bill to provide a citizen cause of action under the Act for violating its provisions.¹¹ The bill was basically sound, yet could have been more carefully drafted. For example, it gave any citizen a cause of action against the Corporation for any alleged violation of the Act. Thus generalized grievances about the most trivial aspect of legal services would have been given a public forum in federal court. Also imprudent, the bill gave prevailing plaintiffs the right to punitive damages, thereby making the poor suffer twice, once for having the Corporation unlawfully spend funds meant for their legal representation and again for having to pay punitive damages to private parties. But after weighing its defects, the Symms bill was a step in the right direction. It should have been given serious attention. There remains an unsatisfied need for such a bill for a number of reasons:

First, the three hundred and twenty-three (323) local programs (grant recipients) are not subject to the Freedom of Information Act, making it virtually impossible to completely monitor and account for \$300 million in taxpayer funds.

Second, the Corporation's investigation of alleged wrongdoing has, up to this point, been wholly one-sided and prefunctory. In investigating complaints, the Corporation has not even bothered to interview the complainant.¹²

Third, the present Act prohibits judicial review of client eligibility. A cumbersome administrative proceeding is provided to resolve complaints of ineligible client representation. Because this process does not work speedily, the complaint becomes moot.¹³

Fourth, even a well-intentioned Corporation cannot adequately prevent the misuse of taxpayer funds. To the extent that the Corporation's new Inspector General does his job, the number of lawsuits that would be filed under an amended act may conceivably be fewer than otherwise. So much the better. Yet the Inspector General cannot give relief to those aggrieved by a program's misuse of taxpayer dollars.

Fifth, the Inspector General cannot develop a body of law that will endure despite changes in administration.

The approach taken to restrict political activity in the continuing resolution as passed December 20, 1982 is impotent and possibly creates more problems than it solves. An initial defect in the continuing resolution is that it once again relies upon legal services programs to restrain their own political activities. Unlike the original Act, which made three exceptions for lobbying,¹⁴ the continuing resolution provides for only one. No funds can be used to influence any elected official, except for "communications made in response to any federal, state, or local official, upon the formal request of such official."¹⁵ As tough-sounding as that language appears to be, the Corporation and its recipients are restrained only by precatory language with no teeth.

The resolution further hamstring the Corporation by preventing a reevaluation of all programs for future funding until a Board of Directors is confirmed. "[N]otwithstanding any regulation, guideline or rule of the Corporation, funds appropriated . . . [must be distributed] so as to insure that funding for each current grantee is maintained in 1983 of the annualized level of which such grantee was funded in 1982]".¹⁶ Unfortunately, freezing present funding is potentially harmful to many. Programs cannot be reevaluated for additional funding based upon the 1980 census rather than the 1970 census. For some programs, operating in states increasing in population since 1970, the difference in funding

could be as much as \$200,000 based upon the dollar allocation per eligible poor person. Though some programs may conceivably receive less funding, the resolution prevents the Corporation from making any decisions, even equitable ones. Besides that, the resolution conflicts with the Act's mandate that the Corporation "insure that grants and contracts are made so as to provide the most economical and effective delivery of legal assistance to persons in both urban and rural areas."¹⁷

It appears, therefore, that almost no one in legal services is accountable for anything. To quote another former legal services lawyer, "Congress' worst gift to legal services was freedom from accountability. . . I [have] learned that programs around the country, insulated from accountability by Congress, treated the restrictions imposed by Congress as of no account since they were not enforceable."¹⁸ At least at the moment, field programs are not accountable to the Corporation. Whether they deserve more or less funding they will receive the same. The Corporation, having no Board of Directors, cannot act and is not accountable. These problems may be potentially remedied by naming a Board. Yet the Corporation and its recipients would remain unaccountable to anyone but themselves for unlawful expenditures.

Under a Symms-type proposal accountability is ensured. A cause of action under such a proposal could be limited to aggrieved persons, that is, those directly impacted by the Corporation's unlawful expenditures, rather than any citizen.

Though punitive damages are inappropriate, a potential award of attorney's fees to prevailing parties would both deter frivolous actions and reward meritorious claims brought in the public interest. Surely such a change in the Act is a modest proposal. It gives practical effect to the often-repeated but just as often ignored prohibitions against lobbying and political activity. It ensures that an impartial arbiter will interpret the law.

The greatest advantage to a Symms-type amendment in the Act is that the poor have funds spent for their direct representation rather than diverted to unlawful political action.

FOOTNOTES

1. Hearings before a Subcommittee on the Committee on Appropriations, 97th Cong., 2nd Sess. 176 (1982) (Statement of Maxwell A. Miller).
2. 42 U.S.C. § 2996 (1976).
3. My caseload was evidently similar to most legal services lawyers. The largest percentage of total cases handled by legal services lawyers in 1980 -- over 30% -- related to family matters. One half of these were divorce cases and the other half included custody, visitation, guardianships and wills. Eighteen percent (18%) of the total caseload involved housing problems, the largest category of which was landlord-tenant disputes. Typically, a legal services lawyer represents a tenant about to be evicted. Seventeen percent (17%) could be classified as public benefit cases including social security, welfare and unemployment compensation. Another fourteen percent (14%) of the legal services cases fall into consumer problems, e.g. collections, repossessions, garnishments, deficiencies, warranties and contracts. The remaining 18% come under miscellaneous categories such as unemployment disputes, wage claims, and administrative matters. Legal Services Corporation, Characteristics of Field Programs Sponsored by the Legal Services Corporation, at 5 (Feb. 1981).
4. Breger, Legal Aid for the Poor: A Conceptual Analysis, (60 N. Car. L. Rev.) 2, 287 (1982). Professor Breger claims that promoting social change is the "conventional justification for the federal government's provision of legal aid. . ." Id. at 286.
5. Grassley v. Legal Services Corporation, 535 F. Supp. 818 (D. Iowa, 1982).
6. Memorandum by Alan Houseman, Director of the Legal Services Research Institute, to State Coordinators and Other Interested Parties (December 29, 1981). The Houseman Memorandum is a call to political action with such statements as the following: "In the short run, a strong local political base will be critical if we are to successfully obtain support from Congress for the continuation of an aggressive legal services program." Id. at 7.

7. Seminar presentation by Bari Schwartz, lobbyist for the Food Research and Action Center, in San Juan, Puerto Rico (Nov. 9-14, 1980). Schwartz stated:

What all of us ultimately care about -- what every single support center cares about -- ultimately, is meaningful welfare reform, and in meaningful redistribution of wealth and income in this country. Well, getting from here to there is easier said than done. It so happens that there's not a majority in this country, or in Congress, for doing that right now, and, what Congress has responded to us is not giving low-income people dignity that comes with meaningful cash assistance -- what they've responded to is these individuals' needs. We'll hand them some food stamps -- we'll give them a section 8 certificate -- which all of us get frustrated about sometimes, because that's not really doing anything to eliminate poverty or change the conditions of poverty, in any event, you have Congress responding to individual needs. They're not responding to a poor peoples' platform -- they're responding to individual needs. And, whether I like it or not, because of my own personal political and social views, I know that on the food issue, I get the most mileage out of doing a bleeding heart, kind of churchy, feed-the-poor kind of thing.

8. The National Client's Counsel is a member of a coalition political group that includes members like Tom Hayden's Campaign for Economic Democracy. A newsletter published by the group says "we need to build a political machine. That will take massively increased resources, staff and money." The newsletter continues to say it must "use the tools of grassroots organizing to focus on local elections." Policy Networks Newsletter (May, 1981). The Executive Director of the Coalition, Heather Booth, explained the coalitions goals in Booth, Left with the Ballot Box, 8 No. 3 Working Papers 17 (May/June 1981).
9. Caplan, Should Reagan Kill Legal Services?, The Wall Street Journal (Dec. 9, 1982).
10. Grassley v. Legal Services Corporation, 535 F. Supp. at 825.

11. S. 2393, 97th Cong. 2nd Sess. (1982).
12. In one instance, United States Senator Charles Grassley of Iowa complained that the Fort Dodge Office of the Legal Services Corporation of Iowa was organizing political groups. The local office denied the charge. The Corporation followed up by a letter concluding there was no evidence of wrongdoing. This conclusion rested exclusively upon interviews that a Corporation official held with legal services workers at the Fort Dodge Office. The complainant was never interviewed; nor were his allegations investigated through independent sources. Letter of Charles Gressley, United States Congressman, to John Barrett, Executive Director, Legal Services Corporation of Iowa (February 28, 1980). Grassley stated: "It has been alleged that staff employed by the Fort Dodge office of Legal Services Corporation of Iowa is in the process of organizing a welfare rights unit or organization." Barrett responded, "These activities are largely carried out under the express terms of our ACTION grant, and would not be covered by regulations of the National Legal Services Corporation." Letter of John Barrett, Executive Director, Legal Services Corporation of Iowa, to Congressman Charles Grassley (March 4, 1980). Grassley replied "I am afraid your letter is not responsive to my questions." Letter of Charles Grassley, United States Congressman, to John Barrett, Executive Director, Legal Services Corporation of Iowa (March 7, 1980). Mary Bourdette, of the Corporation's Office of Government Relations, finally issued a report concluding that all activities at the Fort Dodge Office were legal after she had "interviewed the entire staff." Memorandum from Mary Bourdette, Office of Government Relation to Jody Raphael, Chicago Regional Office, (May 9, 1980).
13. 42 U.S.C. § 2996(e)(b)(1)(B).
14. P.L. 97-377, 97th Cong. 2nd Sess. (1982).
15. The three exceptions are: (1) when recipients are asked to testify before Congress or a legislative body; (2) when recipients lobby on behalf of a particular client; and, (3) when recipients lobby on matters directly affecting the Corporation or the recipient.

The Corporation itself is precluded from lobbying. The Act provides that the Corporation "[M]ay testify or make other appropriate communication (a) when formally requested to do so by a legislative body, a committee, or a member thereof, or (b) in connection with legislation or appropriations directly affecting the activities of the Corporation. 42 U.S.C. § 2996e(c)(2) (1976) (emphasis added).

16. Id.
17. 42. U.S.C. § 2996e(a)(1)(B).
18. Letter of Alan Gallagher, former legal aid lawyer, to Ed Meese, (March 4, 1983).

APPENDIX 15

PROJECT ADVISORY GROUP
THE NATIONAL ORGANIZATION OF LEGAL SERVICES PROGRAMS

LEROY CORDOVA, CHAIRPERSON
FRESNO/MERCED COUNTIES LEGAL SERVICES
FRESNO, CALIFORNIA
(209) 441-1611

RACHEL MILLER, VICE CHAIRPERSON
LEGAL AID SOCIETY OF PASADENA
PASADENA, CALIFORNIA
(213) 795-7286

DON HOLLINGSWORTH, VICE CHAIRPERSON
CENTRAL ARKANSAS LEGAL SERVICES
LITTLE ROCK, ARKANSAS
(501) 376-3423

CONNIE GOMES, SECRETARY-TREASURER
RHODE ISLAND LEGAL SERVICES
PROVIDENCE, RHODE ISLAND
(401) 274-2652

WASHINGTON OFFICE
1029 VERMONT AVE., N.W.
SUITE 860
WASHINGTON, D.C. 20005
(202) 347-9471

ANH TU, STAFF COORDINATOR

May 9, 1983

RECEIVED MAY 12 1983

Senator Orrin G. Hatch
Chairman
Senate Labor & Human Resources Com.
Dirksen Building, Room SD428
Washington, D.C. 20510

RE: material to be included
in the record of the
Committee's hearing on
the Legal Services Corp.
on May 4, 1983

Dear Senator Hatch:

I am writing this letter to take exception with the allegations made by Mr. William Olson when he testified before your Committee on May 4 regarding the reauthorization of the Legal Services Corporation.

Mr. Olson, on several occasions during the hearing, charged that the Project Advisory Group (PAG) is involved in the "laundering" of Legal Services Corporation funds for impermissible uses.

Mr. Olson's statements are untrue, and he knows them to be untrue.

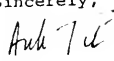
Charles Dorsey, former chairperson of the Project Advisory Group, and I appeared last October before a joint meeting of the Legal Services Committee on Grants and Contracts and the Provision of Legal Services at which meeting the question of PAG's relationship with the Coalition for Legal Services was fully explored.

Mr. Olson has been provided with information by the staff of the Corporation, staff brought in under the recess appointment board, and with audits of the Coalition which indicate that no money received by the Coalition from PAG has been used for impermissible purposes. Furthermore, there has been no indication that PAG has engaged in any impermissible practices using funds from recipients of the Corporation.

Judging from the fact that Mr. Olson persists in his innuendo, when he has been provided with information that would satisfy any reasonable person, I can only assume that his unfounded attacks on PAG are an attempt to discredit Legal Services programs to further his aim of dismantling the Legal Services Corporation and the programs which provide services to hundreds of thousands of poor people every year.

I ask that you place this response and attachment to Mr. Olson's irresponsible and untrue charges in the Committee record.

Thank you for your consideration.

Sincerely,

Anh Tu

Encl.: LSC Staff Report on PAG
October 1982

cc: Honorable Robert Kastenmeier
Chairman, House Judiciary Subcom.
on Courts, Civil Liberties &
the Administration of Justice.

JOINT MEETING OF THE
COMMITTEE ON THE PROVISION OF LEGAL SERVICES
AND THE
SPECIAL COMMITTEE ON GRANT AND CONTRACT PROCEDURES

October 16, 1982
9:30 A.M. - 4:00 P.M., Saturday

Airport Hilton
North Ballroom
Indianapolis International Airport
Indianapolis, Indiana

BRIEF DESCRIPTION OF PROJECT ADVISORY GROUP

The Project Advisory Group (PAG), a non-profit corporation, is the "national organization of legal services programs -- through their workers and clients."¹ It is organized to insure that the viewpoints of the field program staffs and clients are represented in all matters relating to legal services. As the "congress" for the legal assistance "community", PAG provides legal representation, technical assistance, and other general support functions for legal services programs and clients, monitors and informs programs and clients of issues and matters germane to legal services, and provides a forum and focus for the formulation, articulation, and dissemination of policies and positions on such issues independent of (though not necessarily antagonistic to) the Legal Services Corporation (LSC).

PAG's roots can be traced to other organizations which existed prior to the establishment of the Legal Services Corporation and which were composed primarily of project directors. Its current structure reflects a field-controlled philosophy in which the committees established within PAG and representative of all field staff persons and clients actually do the work of the organization.

¹Description of the Project Advisory Group, May, 1978 (Mimeo).

PAG's organizational structure reflects one of the basic premises underlying its philosophy: that broad-based participation is an essential element to a rational decision-making process, particularly when those decisions affect a "community" as large and diverse as legal services. In formulating its own policies and positions, PAG draws upon the perspectives and experiences of a governing body and committee membership representative of the various interests within the "community."

The governing body of PAG, the "Steering Committee," represents all of the constituencies of the legal services community. Each of the nine LSC regions annually elects five representatives (one director from a large project, one from a small project, one staff attorney, one paralegal, and an eligible client). Of those elected, there must be at least one woman and one minority person from each region. Additional Steering Committee positions are filled by representatives of several national organizations (NCC, the Minority Caucus, migrant and Native American programs, and support centers).

The Steering Committee sets the broad policy directions for the organization and is headed by four officers elected each year at the annual meeting. Current PAG officers are: Chairperson Charles Dorsey (Executive Director, Legal Aid Bureau, Inc., Baltimore), Vice Chairpersons Rachel Miller (a client from Pasadena, California) and Don Hollingsworth

(Executive Director, Central Arkansas Legal Services), and Secretary-Treasurer Connie Gomes (a paralegal with Rhode Island Legal Services).

Between the three annual Steering Committee meetings, major decisions are made by an eight person Executive Committee, composed of the four officers and four additional members selected by the Steering Committee. Most of the policy positions adopted by the Steering Committee are based upon the recommendations of several substantive area committees: the Funding Criteria Committee, Legislative Committee, Regulations Committee and Paralegal Committee.

To fund its operations, PAG requests individual field programs to pay dues based upon the following formula: \$115 per \$100,000 of LSC annualized funding level with a \$5,000 dues ceiling. With 270 dues-payers out of a possible 325 field programs, PAG's budget for 1982 totals approximately \$180,000. The funds are used to maintain its Washington office as well as to cover the costs of staff travel, committee meetings, personnel salaries and PAG publications (PAG Update). Those programs that choose not to pay dues are neither excluded from PAG's activities nor denied access to its resources.

PAG maintains a small office in Washington, D.C. composed of staff coordinator, Anh Tu, and one administrative assistant. The Washington office assists in coordinating PAG activities, in

the composition of PAG's newsletter and in keeping the membership informed of developments within the Corporation and on Capitol Hill.

In the past, PAG's analyses and policy formulation have focused on legislative developments affecting legal services, more specifically, LSC reauthorizations, appropriations, restrictions on LSC and field staff activities, and the confirmation of nominees to the LSC Board of Directors. It has also formulated policy positions on LSC budgets, development of LSC regulations, LSC enforcement of its statute, regulations and policies, and other matters affecting field programs such as the Delivery Systems Study, private bar involvement, field program performance standards and evaluations, training, and grant administration.

PAG has influenced LSC policy on many of these matters, particularly during the first years of the Corporation's existence. Because the LSC staff was relatively inexperienced and not as knowledgeable about legal services issues as many PAG members, the Board relied quite heavily on the guidance of PAG's Funding Criteria Committee for funding allocation decisions and appropriation requests, and on PAG's Regulations Committee for the initial development of the LSC regulations. A pattern ultimately developed whereby the LSC staff would consult with PAG and other legal services constituent groups prior to presenting recommendations to the Board on a broad range of policy issues.

As LSC staff became more experienced in conducting the affairs of the Corporation, PAG's contributions, while still important, became less of a factor in policy development. The Corporation continued to consult with PAG and solicit its ideas on matters affecting the legal services "community". The exchange of ideas usually was accomplished at meetings between the LSC staff and members of PAG's substantive area committees. LSC staff members also attended meetings of PAG's Steering Committee to explain the staff's position on matters under consideration. Discussing various viewpoints in advance of Board decisions avoided conflicts and generally was viewed as productive by the parties involved. At other times, PAG utilized alternative avenues to advocate for its position on issues, such as participation at LSC Board and Committee meetings, presentation of testimony before Congressional committees, and contact with elected representatives through PAG members in individual states.

In addition to tracking activities within the Corporation and on Capitol Hill, PAG has assumed responsibility for addressing and resolving problems and concerns common to field programs. Most recently, PAG's efforts have focused on the impact of the retrenchment process on the field, labor-management differences that have resulted from reductions-in-force, and the impact of LSC fund balance policy on field program operations.



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HARLINGEN, TEXAS 78551

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HARLINGEN 423-0340 — WATTS 1-800-292-5423

April 27, 1983

Committee on Labor and Human Resources
United States Senate
Washington, D. C. 20510

Alt'n: Mr. Steve Jones

Dear Mr. Jones:

Thank you for visiting with me on the telephone today, and as requested, I am writing to relay a situation that occurred yesterday involving the Texas Rural Legal Aid.

Our State Legislature is now in session, and I have been in Austin frequently working on several bills. Just yesterday, I dropped by the Texas Farm Bureau's office in Austin and noticed a young lady involved in a meeting with one of the Bureau's staff members. I had seen the lady in the Capitol on several occasions and remembered she had been in attendance at a recent House Committee Hearing. I did not, however, know who she was at the time. After the meeting was over and the lady had left, Mr. Bounds, the Farm Bureau employee, invited me into his office and said that the lady, whose name is Rebecca Lightsey, had asked to meet with him to see if some kind of compromise could be worked out on H.B. 925, sponsored by Representative Alejandro Moreno, Jr. H.B. 925 would amend the Texas Minimum Wage Law, and is strongly supported by the farm workers unions. Agriculture, on the other hand, is opposed to the Bill and has successfully kept it in Committee. Mr. Bounds said that Ms. Lightsey first introduced herself as representing the farm workers, but when questioned further, admitted she was working on the Farm Workers Advocacy Project, and is an employee of Texas Rural Legal Aid, P.O. Box 1931, Austin, Texas 78767, phone number 512/474-0812.

By coincidence, Mr. Jones, I had just read an article stating that a final rule has been published in the March 21, 1983 issue of the Federal Register prohibiting such activities by any grantee of the Legal Services Corporation! The fact that

CLINE TO MARTIN
Houston, Texas

RAY WILLIAMS
VICE PRESIDENT
Houston, Texas

J. J. PALMER
Secretary Treasurer
Phon, Texas

WILLIAM E. WELLES
Law Office, Inc. & Associates
Houston, Texas

J. M. A. WEAVER
Executive Assistant
Houston, Texas

DIRECTIONS

HEMLOCK BULLFIGHT
Pearland, Texas

HANSEN BULLFIGHT
Houston, Texas

R. J. BISHOP
Phon, Texas

J. A. BISHOP
Houston, Texas

TOMMY L. COOK
Houston, Texas

LOUIS F. FORD
Houston, Texas

DR. J. GONZALEZ
Houston, Texas

JOE HOGGINS
Houston, Texas

PAUL HOGGINS
Houston, Texas

JACK HOGGINS
Houston, Texas

M. C. JACOB
Houston, Texas

RAY KATZ
Houston, Texas

LOUIS KATZ
Houston, Texas

A. J. KATZ
Houston, Texas

LOUIS KATZ
Houston, Texas

LOUIS KATZ
Houston, Texas

LOUIS KATZ
Houston, Texas

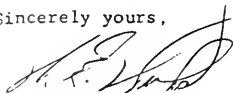
LOUIS KATZ
Houston, Texas

LOUIS KATZ
Houston, Texas

this Rural Legal Aid employee was illegally involved in lobbying really doesn't surprise me. We have many witnesses that have observed them in union picket lines, and they have continuously filed frivolous and harassing law suits against the growers and shippers. In Texas, the Texas Rural Legal Aid has effectively become an arm of the farm workers unions.

On behalf of our industry, I want to thank you for hearing us out on this problem, and sincerely hope that somehow the Legal Services Corporation can be disbanded, or at the very least, brought back under control and required to operate within their mandate.

Sincerely yours,

A handwritten signature in dark ink, appearing to read 'W. E. Weeks', with a stylized flourish at the end.

W. E. WEEKS
Executive Vice President

WEW:bb



FARM WORKERS STRIKE — Inez Flores, left, and J.E. Saucedo, right, both of Texas Rural Legal Aid, join a flag-waving S.T. Rendon, a private consultant for farm workers, during a strike against onion packers in

Hereford. About 200 workers claiming they are not being paid minimum wage, as required by law, walked off the job Tuesday. (AP)

Valley Star 6-26-68

*TRLS Attorney Kline said
seen in Union Picket Lines many
times—*

Valley Morning Star
Saturday 9-13-80

Suit Names Judge

BROWNSVILLE — State District Court Judge Darrell B. Hester has been named defendant in a lawsuit filed in U.S. District Court by attorneys representing Texas Rural Legal Aid Inc.

The original petition alleges Hester interfered with a Texas Farm Workers Union employee's ability to seek and receive TRLA's legal services after being charged with a misdemeanor in Willacy County last year.

The employee, Roy Hernandez, was among persons whose strike picketing ac-

tivities resulted in arrests on misdemeanor charges in April of 1979. The suit alleges that Hester issued an injunction prohibiting TRLA from representing Hernandez.

Also named in the suit filed this week in Brownsville were Charles Wetegrove, a Willacy County grower, and Charles Wetegrove Co. Inc., a Raymondville produce firm which early last year was the target of a strike by onion pickers.

The suit seeks \$10,000 in damages and attorney costs.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

HOWARD GAULT COMPANY, ET AL

VS.

C. A. NUMBER: 2-80-127

TEXAS RURAL LEGAL AID,
INC., ET AL

AND

TEXAS FARM WORKERS UNION,
ET AL

VS.

C. A. NUMBER: 2-80-129

TRAVIS MC PHERSON, ET AL

DEPOSITION OF ANTONIO ORENDIAN

A P P E A R A N C E S :

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TRINA ISAACS - JULIE COOK
CERTIFIED SHORTHAND REPORTERS
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19 COMPANY, ET AL AND TRAVIS
20 MC PHERSON, ET AL
21
22
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BROWNSVILLE TEXAS

BE IT REMEMBERED THAT, PURSUANT TO ORAL
STIPULATION OF COUNSEL, AND UNDER THE PROVISIONS OF THE
APPLICABLE RULES OF THE TEXAS RULES OF CIVIL PROCEDURE,
THE DEPOSITION OF

ANTONIO ORENDIAN,

AN OFFICER, AGENT, SERVANT OR EMPLOYEE OF THE PLAINTIFF
AND DEFENDANT, TEXAS FARM WORKERS UNION, IN THE WITHIN-
ENTITLED ACTION, CALLED AS AN ADVERSE WITNESS BY THE
PLAINTIFFS AND DEFENDANTS, HOWARD GAULT COMPANY, ET AL
AND TRAVIS MC PHERSON, ET AL, HEREIN, WAS TAKEN BEFORE
ME, JULIE M. CANTU, A CERTIFIED SHORTHAND REPORTER
AND NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON
FRIDAY THE 28TH DAY OF JANUARY, 1983, COMMENCING AT
THE HOUR OF 9:00 A.M. OF SAID DAY, IN THE LAW OFFICES
OF TEXAS RURAL LEGAL AID, INC., 305 EAST JACKSON,
IN THE CITY OF HARLINGEN, COUNTY OF CAMERON, STATE OF
TEXAS.

THE PLAINTIFF AND DEFENDANT, TEXAS FARM
WORKERS UNION, WAS REPRESENTED BY THEIR COUNSEL,
WILLIAM H. BEARDALL, ESQ.

THE PLAINTIFF AND DEFENDANT, TEXAS RURAL
LEGAL AID, INC., WAS REPRESENTED BY ITS COUNSEL,
EDWARD B. CLOUTHAN, ESQ.

THE PLAINTIFFS AND DEFENDANTS, HOWARD GAULT
COMPANY, ET AL AND TRAVIS MC PHERSON, ET AL, WERE

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1 REPRESENTED BY THEIR COUNSEL, A. B. HANKINS, ESQ.

2 IT WAS STIPULATED AND AGREED BY AND BETWEEN
3 COUNSEL THAT THE OBJECTIONS TO THIS DEPOSITION WILL
4 BE MADE ACCORDING TO THE RULES.

5 IT WAS FURTHER STIPULATED AND AGREED BY AND
6 BETWEEN COUNSEL HERETO THAT THE DEPOSITION MAY BE
7 SIGNED BEFORE ANY OFFICER AUTHORIZED TO ADMINISTER
8 OATHS.

9 THE SAID WITNESS WAS BY ME FIRST DULY SWORN
10 TO TESTIFY TO THE TRUTH, THE WHOLE TRUTH, AND NOTHING
11 BUT THE TRUTH, IN THE TESTIMONY HE WAS ABOUT TO GIVE
12 IN THE WITHIN-ENTITLED ACTION; WHEREUPON, SAID WITNESS
13 WAS EXAMINED UPON ORAL INTERROGATORIES PROPOUNDED
14 BY COUNSEL, AND MADE ANSWERS THERETO, UNDER OATH,
15 AS HEREINAFTER CONTAINED, AND THE FOLLOWING PROCEEDINGS
16 WERE HAD:
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1 ANTONIO ORENDIAN,
 2 AN OFFICER, AGENT, SERVANT OR EMPLOYEE OF THE PLAINTIFF
 3 AND DEFENDANT COMPANY, TEXAS FARM WORKERS UNION, IN
 4 THE WITHIN-ENTITLED ACTION, CALLED AS AN ADVERSE
 5 WITNESS BY THE PLAINTIFF AND DEFENDANT, HOWARD
 6 GAULT COMPANY, ET AL AND TRAVIS MC PHERSON, ET AL,
 7 HEREIN, AFTER FIRST BEING DULY SWORN TO TESTIFY
 8 TO THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE
 9 TRUTH, TESTIFIED ON HIS OATH AS FOLLOWS:

10
 11 E X A M I N A T I O N
 12

13 BY MR. HANKINS:

14 Q STATE YOUR FULL NAME TO THE REPORTER,
 15 PLEASE.

16 A ANTONIO ORENDIAN.

17 Q WHAT AGE MAN ARE YOU?

18 A WHAT?

19 Q WHAT AGE MAN ARE YOU?

20 A FIFTY-THREE.

21 Q AND DO YOU KNOW YOUR SOCIAL SECURITY
 22 NUMBER?

23 A 557-50-4919.

24 Q WHERE DO YOU LIVE?

25 A ROUTE ONE, BOX 2316, PHARR, TEXAS.

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1 Q DO YOU HAVE A TELEPHONE?
 2 A 787-5984.
 3 Q AND HOW ARE YOU EMPLOYED?
 4 A I AM SELF EMPLOYED.
 5 Q WELL, DOING WHAT KIND OF WORK?
 6 A OH. TRYING TO ORGANIZE FARM WORKERS.
 7 Q WELL, ARE YOU EMPLOYED BY THE UNION?
 8 A NO, NOT --- I AM A DIRECTOR OF THE
 9 UNION, AND I DIRECT THE EFFORT, THE SAME EFFORT.
 10 Q WELL, I DON'T UNDERSTAND. ARE YOU
 11 AN EMPLOYEE OF THE UNION? DO THEY PAY YOU?
 12 A NO, THEY DON'T PAY ME. I AM TRYING TO
 13 SURVIVE.
 14 Q WELL, HOW DO YOU MAKE A LIVING?
 15 A WELL, EASY, WITH THE DONATIONS THEY
 16 RECEICE ACROSS THE NATION.
 17 Q OKAY. HOW LONG HAVE YOU BEEN IN THE
 18 BUSINESS OF ORGANIZING FARM WORKERS?
 19 A OH. A LONG TIME AGO, SINCE 1965.
 20 Q WHAT IS YOUR FORMAL EDUCATION?
 21 A WELL, ONLY TO FINISH ELEMENTARY SCHOOL.
 22 Q WHAT KIND OF WORK DID YOU GENERALLY
 23 DO FROM THEN UNTIL YOU STARTED DOING UNION WORK IN THE
 24 SIXTIES?
 25 A OH. I WAS LIVING IN THIS COUNTRY DOING

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1 THE FARM WORK AND BE FIRED FROM THE GROWERS WITHOUT
2 PAY.

3 Q YOU ARE AN AMERICAN CITIZEN, I GUESS?

4 A YOU GUESS RIGHT.

5 Q DO YOU REMEMBER THIS INCIDENT OUT IN
6 HEREFORD IN 19 --- THE SUMMER OF 1930?

7 A ALMOST, I WAS THERE.

8 Q WHEN DID YOU GO UP TO THAT AREA, ABOUT
9 WHAT DATE?

10 A I THINK ON THE LAST DAY OF JUNE OR
11 EARLY JULY.

12 Q AND HOW LONG DID YOU STAY THERE?

13 A THAT WHOLE MONTH OF JULY, SOMETHING TO
14 THE END OF JULY. I DON'T REMEMBER.

15 Q YOU WERE THERE ABOUT A MONTH?

16 A ALMOST.

17 Q AND WHERE DID YOU STAY WHILE YOU WERE
18 UP THERE?

19 A WELL, FIRST, WE STAYED --- WE DON'T
20 HAVE ANY PLACE. SO, I STAY IN THE HOTEL LIVING WITH
21 OTHER PEOPLE. LATER ON, WE HAVE AN OFFICE OVER THERE
22 IN SAN JOSE CHURCH.

23 Q WHAT OTHER PEOPLE WERE THERE THAT WERE
24 CONNECTED WITH THE UNION?

25 A DIRECTLY CONNECTED WITH THE UNION,

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1 JESUS MOYA AND MANY OTHER PEOPLE WAS FROM HEREFORD,
2 AROUND THERE.

3 Q DO YOU REMEMBER ANY OF THEIR NAMES?

4 A WELL, THIS IS A LOT OF --- SEE,
5 A LOT OF PEOPLE ARE FARM WORKERS AROUND HEREFORD,
6 BECAUSE UP THERE --- UP THERE, WE SEND ONE OR TWO
7 PEOPLE. THEY TALK TO THE DIFFERENT WORKERS. SO,
8 EVEN THE WORKERS, THEY LEAVE FROM HEREFORD TO THE
9 VALLEY. THEY TELL US WHERE THEY ARE OR WHERE THEY
10 HAVE BEEN AND WHAT THEY WORK, AND THIS IS THE WAY
11 WE ARE TRYING TO MAKE OUR CONTACTS, AND I STARTED
12 ORGANIZING THEM OR TALKING TO THEM.

13 Q WELL, DO YOU REMEMBER THE NAMES OF
14 ANY OF THEM THAT WERE UP THERE DURING THAT PERIOD
15 OF TIME?

16 A YES, JULIO CORRELLO, MRS. CASTILLO,
17 MS. MURELES, FAMILIA MURELES AND MOST OF THEIR FAMILY
18 WORKERS.

19 Q DID YOU PARTICIPATE IN ANY OF THE PICKETING
20 THAT TOOK PLACE?

21 A YES, I REMEMBER THE DAY UP TO THE
22 DAY THEY GIVE US THE INJUNCTION. I HAVE TO HAVE
23 A ROLL AND BE SURE TO MEASURE FIFTY FOOT APART. SO,
24 THAT WAY, I NOT --- MY PEOPLE CAN BE IN A LAWFUL
25 ASSEMBLY ACCORDING TO THE LAW THAT HAS BEEN DECLARED

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1 UNDER THE CONSTITUTION ON THREE DIFFERENT OCCASIONS.

2 Q WELL, MY QUESTION WAS, DID YOU PARTICIPATE
3 IN ANY OF THE PICKETING YOURSELF?

4 A AND MY ANSWER IS, I GOT A TAPE
5 MEASURE. EVERYBODY IS SUPPOSED TO BE FIFTY FEET
6 APART.

7 Q WELL, I AM REALLY NOT ASKING YOU
8 ABOUT THAT AT THIS TIME. DID YOU GO OUT TO ANY OF
9 THESE FIELDS AND PARTICIPATE IN THE PICKETING?

10 A LIKE I TOLD YOU, I WAS --- I HAD BEEN
11 IN CHARGE TO TAKE CARE OF THOSE THINGS, TO CONDUCT
12 IN A NON-VIOLENT MANNER IN THE BEST WAY WE CAN.

13 Q CAN YOU TELL US THE LOCATION OR THE
14 NAME OF THE OWNER OF THE FIELDS WHERE --- THAT WERE
15 PICKETED?

16 A MAYBE I CAN TELL YOU ONLY THE GUNS
17 THEY WERE USING AND THE WAY THE ONE GROWER EXPOSED
18 HIMSELF, BECAUSE WE ARE ONLY THREE OR FOUR PICKETERS
19 ONLY THAT TIME WHEN THEY PUT AMMONIA IN THE PICKETERS
20 AND THINGS LIKE THAT, BUT I DON'T KNOW. I DON'T
21 HAVE THE NAMES OF THOSE GROWERS.

22 Q HOW MANY DIFFERENT FIELDS DID YOU
23 PARTICIPATE IN PICKETING AT?

24 A QUITE A DIFFERENT FIELDS, THREE OR
25 FOUR A DAY.

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1 Q THREE OR FOUR A DAY?

2 A RIGHT.

3 Q FOR HOW MANY DAYS?

4 A FOR THE --- FOR THE LAST TWENTY OR
5 THIRTY DAYS I WAS THERE.

6 Q WELL, DID YOU PARTICIPATE IN PICKETING
7 SUBSTANTIALLY EVERY DAY DURING THE THIRTY DAYS YOU
8 WERE THERE?

9 A MOST OF IT. LIKE I SAY, I HAVE TO
10 DO SOME KIND OF PUBLIC RELATIONS. I WENT IN THE
11 MORNING TO SEE THE PICKETS, BEACUSE OF THE INJUNCTION
12 TO BE SURE THAT PEOPLE NOT SUPPOSED TO BE CLOSER THAN
13 FIFTY FEET, AND AT THE SAME TOKEN, TO GO TO TALK
14 TO THE PEOPLE OR THE GROUPS, OTHER ORGANIZATIONS THAT
15 ARE WILLING TO HELP US.

16 Q WELL, I GET THE IMPRESSION FROM YOUR
17 ANSWERS THAT THE THING THAT YOU WERE MOST CONCERNED
18 ABOUT IN RECARD TO THIS RESTRAINING ORDER WAS THIS
19 FIFTY FEET DEAL, IS THAT RIGHT?

20 A NOT EXACTLY. I THINK THE WORSE PART
21 OF IT IS WHEN THE GROWERS EXPOSED THEMSELVES IN FRONT
22 OF THE WOMEN JUST BEACUSE THEY ARE ALONE, OR WHEN THEY
23 USE THE GUNS AGAIN WHILE THEY ARE TRYING TO INTIMIDATE
24 THE WORKERS. THIS IS MY MAIN CONCERN.

25 MR. HANKINS: OFF THE

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1 THE RECORD A MINUTE.
2 (WHEREUPON A BRIEF DISCUS-
3 SION WAS HELD OFF THE RECORD.)
4 Q IF YOU WILL, PLEASE, GO A LITTLE
5 SLOWER AND I WILL TRY A LITTLE HARDER TO SEE IF I CAN
6 UNDERSTAND YOU.
7 A OKAY.
8 Q NOW, THE LAST QUESTION WAS WHETHER YOU
9 WERE CONCERNED WITH THE --- PRIMARILY WITH THIS
10 FIFTY FOOT DEAL? IS THAT WHAT YOU WERE PRIMARILY
11 CONCERNED WITH OR SOMETHING ELSE?
12 A NO, I ANSWER YOU NOT ONLY THAT ONE.
13 OUR MAIN CONCERN WAS WHEN THE GROWERS SHOWED ---
14 THEY WERE TRYING TO INTIMIDATE OUR PEOPLE WITH
15 GUNS OR EXPOSING THEMSELVES IN FRONT OF ONE OR TWO
16 LADIES, BECAUSE THEY ARE ALONE.
17 Q WELL, DID SOME OF THESE GROWERS OUT
18 THERE HAVE GUNS WITH THEM?
19 A MANY OF THEM.
20 Q WHO?
21 A SOMETIMES EVEN WE REPORT IT. I ASKED
22 TO THE SHERIFF UP THERE. WE REPORTED PLATE NUMBERS.
23 SOMETIMES WE GIVE THEM AND THEY DON'T DO THEM THINGS.
24 SO, IF THEY DON'T PROSECUTE THEM, WHAT DO YOU TELL ME
25 TO TELL YOU?

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1 Q WELL, DO YOU KNOW THE NAME OF ANY
2 OF THESE GROWERS THAT HAD A GUN OUT THERE?

3 A THEY NEVER INTRODUCED ME MYSELF.

4 Q YOU DON'T KNOW THE NAME OF THEM?

5 A THEY DON'T INTRODUCE ME.

6 Q WELL THEN, YOU DON'T KNOW THEIR
7 NAMES, DO YOU?

8 A I BELIEVE IT.

9 Q HOW DO YOU KNOW THEY WERE GROWERS?

10 A BECAUSE SEE, IF I WALK INSIDE A
11 PROPERTY, I KNOW I AM NOT TRESPASSING, AND WHEN
12 SOMEBODY TALKS --- I BELIEVE YOU ARE THE OWNER OF THE
13 HOUSE WHEN YOU ARE WALKING FROM YOUR HOUSE, NO, OR
14 YOUR HOME?

15 Q WELL, DID YOU GO OUT IN THE FIELDS AND
16 PICKET?

17 A YES.

18 Q AND SOME OTHER MEMBERS OF THE UNION
19 WENT OUT INTO THE FIELDS PICKETING?

20 A SOME. NOT MANY UNION MEMBERS WAS
21 WORKERS THEMSELVES. THEY WALK OUT AND THOSE FROM
22 THE PICKET LINE.

23 Q WELL, WHEN YOU WENT OUT INTO THE FIELD
24 AS YOU HAVE DESCRIBED, DID YOU TRY TO TELL THESE
25 WORKERS TO LEAVE THE FIELDS?

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1 A MOST OF THE TIMES, ONE NIGHT OR TWO
2 NIGHTS BEFORE, WE TALKED TO THEM IN THEIR HOUSES, AND
3 THAT TIME WHEN WE SHOW UP, THEY START JOINING IN OUR
4 PICKET LINE.

5 Q WELL, PLEASE LISTEN TO MY QUESTION AND
6 JUST ANSWER IT. WHEN YOU WENT INTO THE FIELDS AND
7 TALKED TO THE WORKERS, DID YOU TRY TO ENCOURAGE THEM
8 OR TALK THEM INTO LEAVING THE FIELDS, AT THAT TIME,
9 NOT WHAT HAPPENED THE NIGHT BEFORE AT THEIR HOUSE?

10 A I DON'T HAVE TO ENCOURAGE, BECAUSE THEY
11 KNOW ALREADY, AND THEY SAW THE FLAGS OR WHEN THEY
12 SAW ONE OR TWO PEOPLE, THEY KNOW IT IS TIME TO WALK
13 OUT AND ASK FOR BETTER PAY.

14 Q WHERE IS THE OFFICE OF THIS UNION,
15 TEXAS FARM WORKERS UNION?

16 A WELL, WE HAD AN OFFICE IN HIDALGO,
17 BUT A FEW DAYS, WAS BURNED DOWN.

18 Q WELL, DO YOU HAVE AN OFFICE NOW?

19 A IN THAT ADDRESS I GAVE TO YOU.

20 Q I SEE. WELL, THAT IS YOUR HOME ADDRESS
21 TOO?

22 A YES.

23 Q WELL, WAS THE PICKETING OUT THERE
24 SUCCESSFUL?

25 A SURE.

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1 Q ACCOMPLISHED WHAT YOU WANTED TO DURING
2 THAT MONTH?

3 A NO, NOT TIL WHEN THEY GIVE US THE
4 INJUNCTION. THAT IS --- WE WERE SUCCESSFUL TO THAT
5 POINT OF THE INJUNCTION.

6 Q HOW ABOUT AFTER THE INJUNCTION?

7 A NOT ANY MORE, BECAUSE LIKE I SAID,
8 THE GROWERS JUST STARTED DOING WHATEVER TRYING TO
9 AVOID IT FROM THEN.

10 Q WELL, YOU CONTINUED THE PICKETING
11 AFTER THE INJUNCTION, DIDN'T YOU?

12 A YES, WE GOT --- LIKE I TOLD YOU, THAT
13 IS WHY I WENT AND CHECKED EVERY MORNING, SUPPOSED
14 TO BE THE PEOPLE IN THE --- ACCORDING TO THE INJUNCTION.

15 Q WELL, AFTER THE INJUNCTION WAS
16 ISSUED AND THE PICKETING, IT DID CONTINUE THEN YOU
17 HAVE TOLD ME. WAS IT SUCCESSFUL?

18 A NOT ANY MORE WHEN THE GROWERS STARTED
19 INTIMIDATING THE --- OUR PEOPLE.

20 Q WHAT DO YOU MEAN BY INTIMIDATING?

21 A LIKE I SAID, YOU CAN --- I AM SURE
22 YOU KNOW ABOUT THE NEWS MEDIA, WHEN WE RECORDED LIKE
23 A GROWER THREW AMMONIA IN FRONT OF OUR PICKET LINE,
24 AND ANOTHER ONE SHOT A GUN, AND ANOTHER ONE EXPOSED
25 HIMSELF IN FRONT OF THE LADIES, AND I CAN MENTION ---

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1 I CAN FINISH THE WHOLE DAY.

2 Q WELL, WHO THREW AMMONIA ON SOME PEOPLE?

3 A ONE OF THE --- ONE OF THE GROWERS.

4 Q WELL, DO YOU KNOW HIS NAME?

5 A NO, I DON'T REMEMBER. THERE IS SO

6 MANY OF THEM.

7 Q HOW DO YOU KNOW HE WAS A GROWER?

8 A WELL, BECAUSE YOU SEE THE ONE, YOU SEE

9 THEM ALL.

10 Q WELL, IF YOU DIDN'T KNOW THE MAN, HOW
11 DO YOU KNOW THAT HE WAS A GROWER?

12 A WHY, BECAUSE MAYBE HE NOT WAS A
13 LAWYER, BECAUSE HE DON'T HAVE A TIE.

14 Q I DIDN'T UNDERSTAND YOU.

15 A HE NOT WAS A LAWYER, BECAUSE HE DON'T
16 HAVE ANY TIE, A BOW TIE THERE IN THE MORNING.

17 Q HE DIDN'T HAVE ANY NECK TIE?

18 A NO.

19 Q DOES ANYBODY HAVE ONE ON HERE? AND
20 ARE YOU SAYING THAT SOME OF THEM URINATED IN FRONT
21 OF THESE WOMEN?

22 A YES.

23 Q AND WHO DID THAT?

24 A A GROWER, HE WAS INSIDE THE PROPERTY.

25 Q DO YOU KNOW WHAT HIS NAME WAS?

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BROWNSVILLE TEXAS

1 A NO, MAYBE I KNOW IT WAS IN THE SOUTH
2 PART OF HEREFORD, THE SOUTHEAST.

3 Q DO YOU KNOW WHO THE MAN WAS?

4 A NO.

5 Q AND HOW DO YOU KNOW HE WAS A GROWER?

6 A WELL, LET ME TELL YOU. LIKE YOU SAID,
7 I HEAR THE NAMES, BECAUSE THE LAW NEVER DO THEM THINGS
8 FOR US OR NEVER ENFORCE THE LAW. IT IS USELESS TO
9 BREAKING MY MIND ONE OR TWO TIMES TO LEARN THEIR
10 NAMES. IT IS BECAUSE IT IS USELESS, AND THAT IS THE
11 MAIN REASON, MAYBE IS THE MAIN REASON.

12 Q WELL, THE ANSWER IS THEN THAT YOU DON'T
13 KNOW THE NAME OF WHOEVER THIS PERSON WAS, DO YOU?

14 A RIGHT.

15 Q DO YOU KNOW ANY KIND OF AGREEMENT THAT
16 WAS MADE BY ANY OF THE GROWERS WITH THE SHERIFF OUT
17 THERE?

18 A AGREEMENT BETWEEN THE SHERIFFS AND THE
19 GROWERS?

20 Q YES.

21 A MAYBE, I AM NOT SURE, BUT THE WAY THEY
22 ACT, NOT IN AGREEMENT, THEY ARE IN CAHOOTS TO THE
23 STORY OF THE UNION ORGANIZATION EFFORT.

24 Q BUT YOU DON'T KNOW FROM WHAT YOU HAVE
25 HEARD OF ANY PERSONAL KNOWLEDGE THAT THERE WAS ANY

1 AGREEMENT MADE WITH THE SHERIFF'S OFFICE FIRST?

2 A WHEN THE WATER IS DIRTY, YOU SEE IT
3 RIGHT AWAY THAT IT IS DIRTY. SO, IT IS THE SAME. THE
4 GROWERS ACTING THE WAY THEY ACT, AND THE POLICE FOLLOW
5 THEIR ACTIONS. A LOT OF WAYS THEY MUST HAVE SOME
6 KIND OF UNDERSTANDING.

7 Q WELL, WHAT HAPPENED THAT LED YOU TO
8 BELIEVE THAT THERE WAS SOME KIND OF AN UNDERSTANDING?

9 A SIMPLE, BECAUSE SEE, JUST WE DO SOMETHING
10 --- EVEN WHEN WE DO SOMETHING IN THE FIELDS, RIGHT
11 AWAY THEY TURN TO ARRESTING US OR TO GIVE US AN
12 INJUNCTION, AND WHEN THE GROWERS DO SOMETHING, THE
13 POLICE NEVER FIND THEM OR THEY SEND IN US TO LOOK
14 TO MAKE A REPORT, LOOKING FOR THE JUSTICE OF THE
15 PEACE, FOR LOOKING TO ANYBODY BEFORE WE CAN DO SOMETHING
16 AND NEVER DO ANYTHING AGAINST THEM OR YOU SEE ANY
17 GROWER BEING ARRESTED AND THE CHARGES BE MADE TO THEM.

18 Q WELL, DID YOU GET ARRESTED WHILE YOU
19 WERE OUT THERE?

20 A NO, BECAUSE I DON'T BREAK ANY LAW.

21 Q DO YOU KNOW ANYBODY ELSE CONNECTED WITH
22 THE UNION THAT WAS ARRESTED OUT THERE?

23 A NOT TO MY KNOWLEDGE.

24 Q WELL THEN, WOULD IT BE CORRECT TO SAY
25 THAT SO FAR AS YOU KNOW, NOBODY CONNECTED BY THE UNION,

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1 CONNECTED WITH THE UNION WAS ARRESTED DURING THAT?"

2 A NOT TO MY KNOWLEDGE, NOT THAT I REMEMBER,
3 NO.

4 Q WELL, DO YOU THINK THERE WAS ANY
5 KIND OF AGREEMENT BETWEEN THE DEPARTMENT OF PUBLIC SAFETY
6 WITH THE GROWERS?

7 A YES, SAME, I THINK THERE IS.

8 Q DID YOU SEE ANY HIGHWAY PATROLMEN OUT
9 THERE?

10 A YES, OFTEN EVEN BE PASSING OVER FIFTY
11 MILES THROUGH THE DIRT AND US AND EVERYTHING ELSE,
12 ON A COUPLE OF OCCASIONS.

13 Q SOME OF THE HIGHWAY PATROLMEN THREW
14 DIRT ON YOU?

15 A RIGHT, HIGHWAY PATROL.

16 Q THREW DIRT ON YOU?

17 A SURE.

18 Q DO YOU KNOW WHO THAT WAS?

19 A WELL, THEY WERE DRIVING SO FAST.

20 NO, IT IS IMPOSSIBLE. IF I AM HERE AND JUST THE
21 CAR IS PASSING BY, I AM NOT GOING TO --- I AM NOT
22 GOING TO BE ABLE TO MAYBE RUN FOR A PENCIL AND GET
23 PLATES OR SOMETHING, BECAUSE LIKE I SAID, YOU MENTIONED
24 AN AGREEMENT COULD BE BETWEEN LAWYERS --- I MEAN, THE
25 GROWERS AND POLICE AND EVERYBODY ELSE, NO?

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BROWNSVILLE, TEXAS

1 Q WELL, WHAT I AM INTERESTED IN IS NOT
2 WHAT THE POSSIBILITIES ARE. I WANT TO KNOW WHAT
3 CONCRETE FACTS THAT YOU HAVE THAT YOU CAN TESTIFY
4 ABOUT THAT LED YOU TO BELIEVE THEY MIGHT BE IN
5 AGREEMENT?

6 A WELL, IT IS LIKE I CAN --- YOU ARE
7 NOT GOING TO HAVE ANY CONCRETE FACTS, BUT LIKE I
8 SAID, THINGS YOU SEE TODAY. BECAUSE YOU SEE THE
9 SUN MAYBE, IT IS THE SAME THING.

10 Q WELL, DID WHAT YOU SAW AND OBSERVED
11 LED YOU TO BELIEVE THAT THERE WAS SOME KIND OF
12 AGREEMENT BETWEEN THE DISTRICT ATTORNEY OF DEAF
13 SMITH COUNTY AND THE WORKERS?

14 A I THINK IT WILL BE REAL HARD FOR ME
15 TO PROVE THAT THING, BECAUSE IF I CAN PROVE IT,
16 I THINK, OR IF I HAVE SPECIFICS --- NO, MAYBE I
17 CAN CALL FOR A FEDERAL INVESTIGATION, BUT LUCK,
18 LUCK PROVES. LUCK PROVES MAKE ME NOT TO DO MY
19 NEXT STEP ACCORDING TO THE LAW AND JUST TO BE LIKE
20 RIGHT NOW IS TODAY, BECAUSE I SEE THE SUN OUT.

21 Q WELL, TODAY, YOU DON'T HAVE ANY FACTS?

22 A ABOUT WHAT. THE SUN?

23 Q NO, NO. I AM NOT INTERESTED IN THE
24 SUN. WE CAN SHORTEN THIS AN AWFUL LOT IF YOU WILL
25 JUST RESPOND TO THE QUESTION AND NOT VOLUNTEER THINGS.

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1 WE WILL GET OVER A LOT QUICKER.

2 A OKAY.

3 Q OR WE WILL DO IT EITHER WAY YOU WANT TO.

4 A OH. THAT IS OKAY TO ME. THIS IS THE
6 ONLY THING I GOT TIME.

6 Q BUT YOU DON'T KNOW TODAY OF ANY
7 CONCRETE FACTS THAT WOULD SUPPORT THE PROPOSAL
8 THAT THERE WAS SOME KIND OF AN AGREEMENT BETWEEN THE
9 DISTRICT ATTORNEY'S OFFICE AND THE GROWERS, DO YOU?

10 A NO.

11 Q ALL RIGHT. NOW, YOU AND MR. MOYA SPENT
12 CONSIDERABLE TIME AT THE TEXAS RURAL LEGAL AID
13 OFFICES THERE, DIDN'T YOU?

14 A NOT MYSELF.

15 Q DO YOU KNOW THE PEOPLE CONNECTED WITH THE
16 TEXAS RURAL LEGAL AID THERE IN HEREFORD?

17 A SOMEONES, SOMEONES.

18 Q AT THAT TIME?

19 A AT THAT TIME, YES. SOME PEOPLE, BUT
20 NOT ALL OF THEM.

21 Q WELL, WHO WERE THEY?

22 A EVEN AS A MATTER OF FACT, I DON'T
23 REMEMBER FOR SURE MAYBE ONE OR TWO LAWYERS, AND
24 EVEN I DON'T REMEMBER THE NAMES OF THE OTHER PEOPLE,
25 SECRETARY OR PARALEGALS.

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BROWNSVILLE TEXAS

1 Q WELL, OF COURSE YOU KNOW MR. BEARDALL,
2 THE ATTORNEY THAT IS HERE TODAY?

3 A THAT IS WHAT I SAID.

4 Q AND HE WAS THERE THEN?

5 A THAT IS WHAT I SAID, ONLY ONE OR
6 TWO LAWYERS, BECAUSE I NEED LEGAL ADVICE FROM THEM.

7 Q WHAT I AM ASKING YOU IS, GIVE ME THE
8 NAMES OF THE ONES THAT YOU KNEW THAT WERE CONNECTED
9 WITH THE T.R.L.A. AT THAT TIME IN HEREFORD?

10 A I DON'T REMEMBER.

11 Q WELL, YOU DO REMEMBER MR. BEARDALL?

12 A YES, AND MR. TUDDENHAM, MR. BEARDALL.
13 OKAY, AND ED TUDDENHAM.

14 Q ANYBODY ELSE?

15 A I THINK AND A SECRETARY, TRINI
16 GAMEZ, I BELIEVE. I DON'T --- THAT IS IT.

17 Q DID ANY OF THESE T.R.L.A. PEOPLE EVER
18 JOIN IN THE PICKET LINE?

19 A SOMETIMES WE ASKING FOR ONE PARALEGAL
20 OR ONE LAWYER TO OVERSEE THIS THING, BECAUSE THEY
21 IS THE ONLY THING WHEN THE POLICE IS ACTING, BE
22 A LITTLE MORE DECENT WITH US.

23 Q DID MR. TUDDENHAM EVER GET IN THE
24 PICKET LINE AND PARTICIPATE?

25 A NO, HE DIDN'T PARTICIPATE. HE WAS

TRINA ISAACS - JULIE COOK
CERTIFIED SHORTHAND REPORTERS
BROWNSVILLE, TEXAS

1 AN OBSERVER. ALL THE TIME, I WAS TELLING HIM TO
2 STAY AWAY FROM OUR PICKETS AND MAYBE JUST TO OBSERVE
3 AND MAYBE BECAUSE HE WAS KNOWN BY THE POLICE OR THE
4 POLICE RESPECTED US A LITTLE BIT MORE.

5 Q DID TUDDENHAM EVER GO IN THE FIELD WITH
6 MR. MOYA?

7 A I DON'T KNOW WITH MR. MOYA, BUT WHEN
8 I WAS MYSELF LIKE I TOLD YOU, I RECOMMEND TELLING HIM
9 TO STAY AWAY FROM THE PICKET, JUST TO BE AN OBSERVER.

10 Q WELL, DID HE EVER GO --- MR. TUDDENHAM
11 EVER GO INTO THE FIELD?

12 A NOT TO MY KNOWLEDGE, OR NOT WHEN I WAS
13 PRESENT.

14 Q WELL, AS FAR AS YOU KNOW, HE DIDN'T?
15 YOU NEVER DID SEE HIM?

16 A YES.

17 Q IS THAT WHAT YOU ARE TELLING ME?

18 A NEVER WENT.

19 Q HOW MUCH OF THE DAY WOULD MR. TUDDENHAM
20 BE OUT THERE?

21 A HOW MUCH WHAT?

22 Q WOULD HE BE OUT THERE WITH THE PICKET
23 PEOPLE WHILE YOU WERE PICKETING? WAS HE OUT THERE
24 ALL THE TIME?

25 A WHO?

TRINA ISAACS - JULIE COOK
CERTIFIED SHORTHAND REPORTERS
BROWNSVILLE, TEXAS

1 Q MR. TUDENHAM?

2 A WHEN I WAS MYSELF, NO, SPEND MAYBE AN
3 HOUR OR TWO HOURS, AND WHEN EVERYTHING WAS IN ORDER
4 OR WHEN THE WORKERS, THE HARVESTER WAS MAYBE WHEELED
5 INSIDE THE FIELD OR WHATEVER IT WAS, MAYBE HE DON'T
6 SEE NO NECESSARY OR HE GO UP TO THE OFFICE AND DO
7 SOME OTHER KIND OF WORK.

8 Q DO YOU KNOW A MAN NAMED ESTE RENDON?

9 A NO, NOT THAT I REMEMBER. MAYBE I KNOW
10 HIM. I KNOW A LOT OF PEOPLE, BUT NOT BY NAMES. SEE,
11 THE SAME THING WITH LIKE THE WORKERS. I KNOW THEM,
12 BUT I DON'T KNOW THE NAMES.

13 Q WELL, YOU DON'T KNOW THAT MAN?

14 A LIKE I SAID, MAYBE I KNOW HIM, BUT
15 I DON'T REMEMBER HIS NAME.

16 Q WELL, WAS HE CONNECTED WITH THE UNION?

17 A NOT THAT I REMEMBER. MAYBE WAS A
18 SYMPATHIZER. I DON'T KNOW.

19 Q BUT HE WOULDN'T --- IF HE HAD ANY
20 CONNECTION WITH THE UNION, HE WOULD HAVE BEEN SIMPLY
21 A SYMPATHIZER, IS THAT WHAT YOU ARE TELLING ME?

22 A COULD BE, YES.

23 Q WELL, I AM REALLY NOT INTERESTED IN THE
24 COULD BE'S. IF YOU KNOW, TELL ME. IF YOU DON'T KNOW,
25 JUST TELL ME YOU DON'T KNOW. THAT IS FINE.

TRINA ISAACS - JULIE COOK
CERTIFIED SHORTHAND REPORTERS
BROWNSVILLE, TEXAS

1 A THAT IS WHY I SAY IT COULD BE, YES. *
2 WE SAY IT COULD BE.

3 MR. BEARDALL: I AM NOT
4 SURE WHAT MORE YOU COULD GET
5 FROM HIM. HE SAID HE IS NOT
6 EVEN REALLY SURE WHO ESTE
7 RENDON IS.

8 Q YOU DON'T KNOW WHO HE IS?

9 A NO, BECAUSE I AM NOT FOR SURE, BECAUSE
10 LIKE IF I SAW HIM FACE TO FACE MAYBE AND INTRODUCE
11 MYSELF, RENDON, AND TELL ME ABOUT THE PICKET LINE UP
12 THERE IN HEREFORD OR SOME PLACE, OKAY. YOU ARE RIGHT,
13 BUT NOT TO --- RIGHT NOW, NOT TO MY KNOWLEDGE.

14 Q WELL, DURING THE MONTH OF JULY, 1980,
15 DID ANY OF THE PICKETS BLOCK ANY OF THE ENTRANCES
16 TO THE FIELDS?

17 A NOT WHEN I WAS PRESENT.

18 Q DID ANY OF THE PEOPLE CONNECTED WITH THE
19 UNION MAKE ANY THREATS TO THE WORKERS?

20 A NOT TO MY KNOWLEDGE.

21 Q DID THEY INTERFERE WITH THE PEOPLE COMING
22 AND GOING IN THE FIELD?

23 A NOT TO MY KNOWLEDGE.

24 Q HOW DID YOU SELECT THE FIELDS THAT YOU
25 WERE GOING TO PICKET?

TRINA ISAACS - JULIE COOK
CERTIFIED SHORTHAND REPORTERS
BROWNSVILLE, TEXAS

1 A BECAUSE OF THE PEOPLE, THE WORKERS.
2 LIKE I SAID, WE TALKED ONCE IN THE NIGHT TO THEIR
3 HOMES, AND THEY TELL US, "THE ONIONS IS NOT GOOD",
4 OR "THEY PAY REAL CHEAP." SO, WE SAY, "OKAY.
5 TOMORROW AT MAYBE SUCH AND SUCH HOUR, WE WILL BE
6 THERE IN THE FIELDS TELLING EVERYBODY ELSE TO WALK
7 OUT," AND SO, THAT IS WHY WE ARE SUCCESSFUL, AND
8 MAYBE IN THE FIRST DAY, BECAUSE EVERYBODY WALK OUT
9 FROM THE FIELD MOST OF THAT TIME.

10 Q WELL NOW, AFTER THE RESTRAINING ORDER
11 WAS ISSUED, AND IT WAS ISSUED ON JUNE THE 30TH, 1980,
12 DID YOU CONTINUE PICKETING?

13 A RIGHT..

14 Q AND YOU CONTINUED PICKETING DOWN
15 UNTIL ABOUT THE LAST OF JULY?

16 A THE END OF HARVEST TIME.

17 Q AND WHY DID YOU QUIT?

18 A BECAUSE AFTER THEY DON'T HAVE ANY
19 ONIONS, WE DON'T SEE ANY PEOPLE IN THE FIELDS. IT IS
20 USELESS TO BE BY OURSELVES OUT THERE IN THE FIELDS
21 WHEN IT IS ONLY GROUND, SOMEBODY PLOWING THAT GROUND.

22 Q WELL, THEN THE ONION HARVEST WAS ALL
23 OVER BY THE LAST OF JULY?

24 A BY THE END OF JULY, I THINK.

25 Q AND YOU DID CONTINUE PICKETING UNTIL

TRINA ISAACS - JULIE COOK
CERTIFIED SHORTHAND REPORTERS
BROWNSVILLE TEXAS

1 THE HARVEST WAS COMPLETE, DIDN'T YOU?

2 A RIGHT.

3 Q AND THEN OF COURSE WHEN THE HARVEST
4 WAS COMPLETE, THERE WAS NO POINT IN ANY FURTHER
5 PICKETING? THERE WAS NOTHING TO PICKET, WAS THERE?

6 A BECAUSE THEY DON'T HAVE ANY WORKERS
7 TO TALK.

8 MR. HANKINS: OKAY. I
9 GUESS THAT IS ALL.

10 MR. BEARDALL: LET ME ASK
11 JUST ONE THING THAT I WANT
12 TO CLARIFY, BECAUSE I WASN'T
13 SURE WHAT YOU WERE SAYING.

14
15
16
17
18
19 --O--
20
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26

E X A M I N A T I O N

BY MR. BEARDALL:

Q WHEN YOU SAID TO MR. HANKINS
YOU WENT OUT INTO THE FIELDS TO TALK TO WORKERS,
DID YOU MEAN THAT YOU WENT ON TO PRIVATE PROPERTY,
OR DID YOU TALK TO WORKERS FROM THE PUBLIC ROAD
RIGHT OF WAY?

A NO, WE ARE TALKING TO THE PROPER
ROAD. THAT IS WHY SOMETIMES WE HAVE A LOUD SPEAKER,
SO THEY CAN HEAR US A LITTLE BIT BETTER.

MR. BEARDALL: I DON'T
HAVE ANYTHING ELSE. I JUST
WANTED TO CLARIFY THAT POINT.

MR. HANKINS: THAT IS ALL.

--O--

1 I, ANTONIO ORENDIAN, DO HEREBY CERTIFY THAT
 2 I HAVE READ OR HAVE HAD READ TO ME THE FOREGOING
 3 DEPOSITION, CONSISTING OF TWENTY-SEVEN (27) PAGES,
 4 AND THAT THE FOREGOING TRANSCRIPT, AS SO CORRECTED
 5 BY ME (IF ANY CORRECTIONS APPEAR), CONSTITUTES A TRUE
 6 AND CORRECT RECORD OF MY TESTIMONY.

7
 8 _____
 9 ANTONIO ORENDIAN

10 SUBSCRIBED AND SWORN TO BEFORE ME THIS _____
 11 DAY OF _____, 1933.

12
 13 _____
 14 NOTARY PUBLIC

15
 16 MY COMMISSION EXPIRES: _____
 17
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--O--

TRINA ISAACS - JULIE COOK
 CERTIFIED SHORTHAND REPORTERS
 BROWNSVILLE, TEXAS

Workers Plead Innocent To Charges At McAllen

1-30-81
Valley morning star
MCALLEN, Texas (AP) — Nine farmworkers, including six Mexican nationals, pleaded innocent Thursday to trespassing charges after the judge refused to accept a plea bargain.

The striking farmworkers were arrested last week after occupying the office Mayor Othal Brand to protest wages and working conditions.

Municipal Court Judge Howbert Steele set a Feb. 25 jury trial date after refusing to accept a plea bargain arrangement reportedly agreed to by the city attorney and the farmworkers' attorney.

Lisa Brodiaga told Steele during the 20-minute court appearance that City Attorney Ted Calisi had agreed to accept the protesters' guilty plea in exchange for a promise they would be fined \$1 each.

Steele said if the group pleaded guilty, he saw no reason to fine them less than the usual \$28.50 each.

The defense lawyer then said her clients would plead innocent.

Four defendants gave addresses in Reynosa, Mexico, and two others said they came from nearby small towns in the Mexican state of Tamaulipas. The three others listed addresses in San Juan and Hidalgo.

✓ A group of 40 members of the Texas Farmworkers Union occupied the mayor's City Hall office in his absence Jan. 23 after Brand refused to meet with them over their citrus strike. Nine demonstrators refused to leave and locked themselves in the office at 5 p.m. when City Hall usually closes.

The group surrendered four hours later. They were arrested on criminal trespassing charges and immediately released on their own recognizance.

During the arraignment, Steele ordered the 40 farmworkers in the audience to leave their red and black banners outside the courtroom and remove their hats.

The union has demanded higher wages and improved working conditions in the citrus groves. The orange and grapefruit harvest is under way and industry officials say the strike has not affected supplies of fruit.

Lisa Brodiaga is A
Texas Trial Lawyer And Attorney

Workers End McAllen Siege, Face Charges

By SUSAN STOLER
Associated Press Writer

MCALLEN — Nine members of the Texas Farmworkers Union broke their vow to remain barricaded inside the office of McAllen Mayor Othal Brand over the weekend and were arrested when they ended the city hall occupation Friday night.

City Attorney Ted Calisi said the protesters, booked on trespassing charges and quickly released on their own recognizance, agreed to abandon the office at 9 p.m. Friday following negotiations between union President Tony Orendain and city officials.

Earlier, the farm workers vowed to spend the weekend in the mayor's office to protest his refusal to discuss their citrus strike.

Calisi warned the protesters at 5 p.m. that city hall would be closed and they would no longer have legal grounds to remain inside.

"If you stay past my announcement, you'll be in violation of the law and subject to arrest under the criminal trespass law," he shouted to the workers through a door.

Orendain and about 30 other protesters maintained a vigil outside city hall Friday afternoon.

The farm workers, many wearing bandanas as masks and carrying red and black union banners, occupied Brand's office in city hall Friday afternoon while the mayor was at his private business. The workers maintained their quiet protest without incident.

Brand told The Associated Press he saw no reason to meet with the protesters.

"I've never been a spokesman for the citrus industry. I don't own a tree. That's not the place to talk about anything," said Brand, a major vegetable shipper and wealthy landowner.

Orendain said it was impossible to gauge how many farm workers had quit working the citrus harvest during the two weeks since he called a general strike against the industry.

The farmworkers want a guaranteed 88 hour work day, wages of \$10 a box for oranges and \$8 a box for grapefruit. They also demand fresh drinking water and toilets in the groves.

Orendain says many workers receive only \$2 an hour, less than the minimum wage, and he wants that amount raised to at least \$5 an hour.

However, industry officials contend some workers, who are paid by the amount of fruit they pick, make up to \$8 an hour.

Union spokesman Alfredo DeAvila said farmworkers decided Thursday night to talk to Brand.

"He's the agricultural industry spokesman down here. He's 'Mr. Agribusiness,'" DeAvila said. "He's also been a major spokesman against collective bargaining rights for workers."

Brand has been the target of past farm-worker strikes.

DeAvila said the group would decide how long to stay at City Hall if Brand refuses to talk with them.

The mayor said he told city employees to treat the protesters "gently." He would not say when he would go to the office.

Orendain called for the strike to coincide with renewed efforts in the Texas Legislature to pass a collective bargaining bill for farm workers.

Since the strike began, a traveling picket line has demonstrated at two fruit juice factories, visited citrus orchards and protested at offices of the Texas Citrus and Vegetable Growers and Shippers Inc. in Harlingen.

Fruit pickers are being urged to work instead in winter vegetable fields. The union does not have a strike fund to support members out of work.

Valley Morning Star 1-24-81

Wed Nov 5, 1980
Austin American-Statesman

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Harvard vs. Hereford

Their critics call them cocky, arrogant, carpetbagging kids on an ego trip. Their Mexican-American clients call them champions. They are the Texas Rural Legal Aid attorneys, and they have sparked a bitter dispute in the heart of the High Plains.



'Sometimes it takes drastic steps to cure drastic problems. . . . All these things can and do get emotional.'

—Bill Beardall

'I got my taxes fighting my taxes. . . . I'm paying on both ends to fight myself, so you see why I'm upset.'

—Bruce Coleman



BY MIKE COCHRAN
Associated Press Writer

HEREFORD (AP) — It was nearly 1 a.m. when the patrol car, creeping along a dark, deserted downtown street, came across a youngster, who was perched on a car seat, pushing 13.

"Hey, kid, what are you doing there out at this hour?" the cop demanded.

The youngster bristled. "None of your business. Leave me alone or I'll tell the TRLA."

The incident, witnessed by a reporter, points up the presence of Texas Rural Legal Aid, an organization that has provoked a bitter controversy in Hereford.

In this Panhandle city of 17,000, the overriding issue is civil rights, or a lack thereof. But it is hardly that simple.

It might be styled Harvard vs. Hereford, for it involves several brash, young, Harvard-trained lawyers and a citizenry angry and alarmed.

High Noon in Hereford headlined a Dallas magazine.

CATTLE IS KING here, as the town's name implies. But the fertile farmlands are the crown prince of the local economy. And it is the vegetable and fruit growers, customers, cannery workers and sugar beets that bring the city's farmworkers to the High Plains from March until October.

On the heels of the farmworkers has come the TRLA.

The young lawyers are smart and aggressive and more than a little idealistic.

Carpetbagging troublemakers, their detractors insist. They call the TRLA attorneys aloof and arrogant, and accuse them of stirring up animosity on an ill-conceived and destructive ego trip.

"We need people to help us build and heal, not

Hereford worries

BY KATHERINE ALBERS

Clash News Staff Writer

People in Hereford are afraid. They're afraid they see a trend developing similar to one that ruined the economy of the South Texas town of Raymondville.

In the summer of 1979, activities of the Texas Farm Workers Union (TFWU) and Texas Rural Legal Aid (TRLA) threatened the largest onion grower in Willy County.

In the past he had planted 1,400-1,500 acres of onions annually. Last summer, according to a source in Raymondville, a strike was organized, the grower and his family were harassed and threatened and the harvest was disrupted.

The Willy County farmer employed several hundred men and women. According to his lawyer, this year he switched from onions to grain and cotton, crops cultivated and harvested mechanically, which means a large drop in jobs for farm laborers in Willy County — population 20,000.

A Raymondville source said, "It was a hardship on everybody. When people aren't working, it's hard on everybody. And the unions are making the workers couldn't make the transition. Most of them are on welfare and food stamps."

"That's the sad part of it — the people who live here and who wanted to work — that's the ones who suffered the most."

In Hereford, "None of the workers had ever thought about having a problem before TRLA. And now they're all over the place. They're crying by managers. 'We had no problems. Hereford was a quiet town.'"

But in 1978, all that changed. Bayne says, "I don't know of any good that has come out of TRLA."

While not everyone would go that far, Jerry Smith, assistant district attorney, said Hereford is a quiet town. "If the union goes on, the division gets more acute," he said.

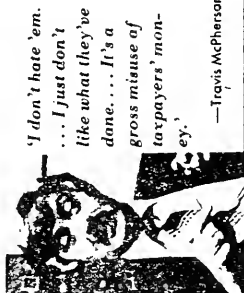
One of the vegetable shippers in Hereford said, "Since TRLA came, discrimination has picked up."

Please see AN OMEN, Page 12-A.



'We had no problems. Hereford was a quiet town. . . . I don't know of any good that has come out of TRLA.'

—Dudley Boyne



'I don't hate 'em. . . . I just don't like what they've done. . . . It's a gross misuse of taxpayers' money.'

—Travis McPherson

"They are hurting our county and dividing our people."

Toe TRLA lawyers maintain they want nothing more than to ensure for the migrant workers a minimum wage, good housing, food stamps and tolerable working conditions.

Finney says the townspeople, but they object to TRLA methods.

"Sometimes it takes drastic steps to cure drastic

Please see HEREFORD, Page 12-A.

Hereford

From 1-A

problems," responds Bill Beardall, one of the attorneys currently on the list of the frazzled.

Since arriving here in the fall of 1976, Beardall, 28, and his colleagues have seen a wide variety of targets, most often in the name of minority rights.

The suits dealt largely with alleged farm labor abuses in Deal Shumaker, a small town in the heart of the Texas Panhandle. Beardall, 28, and his colleagues have seen a wide variety of targets, most often in the name of minority rights.

In one suit they forced the Hereford School Board to hold a new election to elect a new superintendent. In another suit they challenged a discriminatory manner of voting precinct lines as drawn to discriminate against Mexican-American representation.

In still another they attacked the Castro County Housing Authority, forcing the agency to open its housing project to some local call "the bachelors." One TRLA lawyer described it as "two-room housing with 20 people in each room — worse than anything in Brooklyn. ... The Philadelphia Zoo is a safer place to live."

The ill feelings here were compounded by the controversy over the rights of illegal aliens, hardly a new topic in Hereford.

Critics feel the TRLA lawyers run roughshod over Hereford residents while protecting the dubious rights of the "undocumented" workers.

"We are a good community here with many responsible, solid Spanish

plains union growers

"It's a gross misuse of taxpayers' money," he contends.

McPherson circulated a petition asking Congress to cut funding for Legal Services Corp., the public defender.

He got about 1,000 signatures, but no congressional commitment, and a group supporting the government attorneys later matched McPherson's petition.

Most recently, the young lawyers came under fire for their role in the stormy ouster of the city's mayor. The city council is in any public demonstration or picketing boycott, or strike."

Yet one, Ed Tuddenham, entered the field during the strike at the Howland Co. and confronted the crew boss, Alejo Aguilon.

"Mr. Gault is a good man and he really cares about the people who say they are treated," Aguilon said.

"If Mr. Gault is so concerned about the people working for him and how they are treated," snapped Tuddenham, "then why in the hell doesn't he get off his butt and negotiate?"

Tuddenham later denied "cheerleading" charges leveled against him, and charged instead the TRLA was present only to provide legal assistance to its clients.

"The charge that we are somehow instigating this thing is, I think, largely unfounded. I think the government lawyers do little more than litigate their clients away from the very real problems here," says Beardall.

"When a picker is out here bent over double in the sun, when he's not given any wages and then he's told, 'You're not getting a raw deal,'" he adds: "I've contended all along that the wages, working and housing conditions are worse here than anywhere in the Rio Grande Valley. It's very difficult in the Valley to find anyone making less than minimum wage."

Paid by the bag for picking onions, a worker makes less than half the \$3.10 hourly floor, the union claims.

An angry grower, asking anonymously, "Now, with this strike thing, they've gone too far. They're trying to tell me how to run my business and that just doesn't wash. They're coaxing these people into making trouble."

Since half the population here is Mexican-American, it follows that the TRLA actions would have a polarizing effect. Yet, both sides claim their support.

port crosses ethnic lines.

Indeed, some Anglos concede privately they feel the government lawyers do little more than litigate their clients away from the very real problems here," says Beardall.

"There's a lot of power to be able to go into court on an equal footing with the adversary and present your case to an impartial judge," says one.

At the same time, many resent what they consider high-handed and unimpartial tactics of the TRLA.

"If you gotta send in some lawyers," says one farmer, "send us some with maturity and experience who know how to act and dress — who look like lawyers."

All concede there are no simple answers. Few deny that some abuses exist. No one contends that all or even most of the growers are opportunistic. In any case, TRLA isn't expected to go away soon.

Hereford's the stage, grumbles one longtime resident, "all the actions are from out of town."

Omitted from phone book
Adair M. Buckner
 Attorney at Law
 Accepting General Practice
514 S. Polk 373-1127

VOIE
ENSIGN
 The Ensign, a weekly publication of the Catholic Church in the United States.

An omén?

From 1-A

"Imminently. The kids in school are among other things. TFWU members picketed fields and roads, and the shipper's men walked off their jobs to join the strike except for one afternoon when 14 workers didn't show up after lunch and joined the strike."

The growers claim TFLA "cheerleaders" is responsible for the labor woes now being experienced in Hereford. One man said, "We can have a hard time getting the kids to come down. It costs us a lot in time as well as legal costs," but it doesn't cost them a dime."

Smith accused the TFLA lawyers of "brinkmanship." "As a member of the bar, I'm ashamed of them — the way they solicit publicity and send out press releases."

"At first, they did what the agency was supposed to do. But now, I don't feel like they're giving every single person they're supposed to represent a fair play. They're looking for sensationalism," he said.

Ronald Baul, district attorney in DeSoto County, said that they switched sides after the union people to filing class action suits and suits that will provide them publicity."

This past summer, TFWU promoted a strike in the fields and packing sheds during the onion harvest. TFLA lawyers alleged that growers were paying less than minimum wages.

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Eleven local contractors and about 100 workers in the Hereford area wrote a letter to The Hereford Brand, comparing the Hereford strike to the previous situation in Raymondville.

The letter told what results a strike could have in terms of reduced vegetable production and loss of jobs and invited Jesus Moya and his followers to join the strike. "You're not from here, you do not need you and do not want you in our community,"

Bayne said. "That group (TFWU) certainly didn't represent the workers. The problem was between the workers who couldn't get into the fields — who wanted to work — and the union, which wouldn't let them work in the fields."

Moya told field workers the shippers were selling onions for \$10.25 a bag. One shipper offered to sell his whole crop to the union for \$7 and let them make \$3.25 clear profit. "There were no takers," he said.

The growers must pay minimum wages to every worker. That's the law. It's not a negotiable issue. One people are making more than minimum wage and we see some that aren't making the minimum, we get them out."

"We have no control over the crews. They come in and work as long as they want. They're not going to leave like it, when they've made enough, they go home. Some people work hard an hour, then sit down awhile. It's frustrating," said another grower.

Word in Hereford during the strike was that the union paid \$40 a day plus gas to paraders. Another story, prevalent after the strike, concerned a man

who — when asked why he was picketing — said union members had given him a watermelon.

Dean Blucher, chief deputy in the Dear Smith County Sheriff's Department, said the strikers are peaceful and with Moya in the past and most of the rest were children.

The shippers said of the strike, "We don't mistreat anybody. Morally we don't, legally we don't."

"If they think there's an inequality, they should call DOJ. (the Department of Labor). That's their (DOJ) job. The DOJ would be the one to cause attention on the farm workers. But there have to be better ways of level."

doing it. The strike put Mead against Medina like dogs and cats. Smith said, "The long and short of it is they've done more harm than good."

STEEL AID PLAN IN EFFECT

WASHINGTON (AP) — In first installment of President Carter plan to help the ailing American industry, the Commerce Department has announced that the "tariff price" for imported steel pipe will be cut 11 percent above the March level.

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